

REPORT

OF THE

Motor Vehicles Insurance Committee

1936-37



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PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS, NEW DELHI.
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REPORT OF THE MOTOR VEHICLES INSURANCE COMMITTEE.

CHAPTER I.

INTRODUCTORY.

The development of motor transport in India has been the subject of anxious consideration by the general public and the various governments in India for a very long time. The first attempt to co-ordinate opinions on the question was made in 1931, in September of which year a Road Conference assembled in Simla. We are only concerned with one aspect of this question: that of compulsory insurance of motor vehicles which was included in the model motor vehicles rules, which were framed in 1932, on the recommendation of this Conference. The proposal was not approved at that time but again came to the fore at the Road-Rail Conference of April 1933 and the opinions of local Governments were invited. For various reasons no immediate action was then taken though compulsory motor insurance was, as is described later in our report, introduced in certain areas by the Government of Bombay. The proposal was again revived at the Session of the Transport Advisory Council in July 1936 and as a result of a recommendation by that body the Government of India appointed our Committee to investigate the proposal.

2. We give below the Resolution of the Government of India appointing the Committee and containing the terms of reference to it:—

RESOLUTION.

DEPARTMENT OF INDUSTRIES AND LABOUR.

PUBLIC WORKS BRANCH.

New Delhi, the 4th November 1936.

No. C.-99.—The question of enforcing compulsory insurance of motor vehicles against passenger and third party risks as a means of promoting public safety and convenience has been under discussion for several years and a definite recommendation for the appointment of a Committee to report on the question was made by the Transport Advisory Council, at its meeting in July 1936. In view of the growth of motor transport in recent years and of the rising toll of accidents, the Governor General in Council considers that the time has come when an attempt should be made to collect all available data on this difficult subject so that a decision may be facilitated. He has accordingly decided, after consulting local Governments

to appoint a Committee to take such evidence as it considers desirable and to submit a report.

2. The terms of reference to the Committee are as follows:—

- (1) The extent to which motor accidents result in injury or death in circumstances where claims for compensation would lie but cannot in fact be recovered;
- (2) the cost of policies of insurance to cover (i) passenger, and (ii) third party risks in relation to their possible effect upon the taxable capacity of the vehicles, and the cost of operating them;
- (3) to what extent owners of motor vehicles and in particular of public motor vehicles are already insured against third party risks; and whether it is desirable that certain classes of motor vehicles should be compulsorily insured against such risks, and if so, what classes, and the amounts for which vehicles of such classes should be insured to cover (i) passenger, and (ii) third party risks;
- (4) in the present state of insurance development in this country whether any special conditions should attach to insurance policies for these purposes, e.g., debarring the insurer from evading a liability on the ground of flaw in the contract between him and the insured or default by the insured;
- (5) if insurance is to be made compulsory, whether it is desirable to impose special conditions upon insurance companies which may transact this class of business, and if so, the nature of those conditions;
- (6) whether it is necessary or desirable that local Governments should specify the companies with which such policies may be effected;
- (7) any other questions which may arise out of the examination of this subject and have a bearing on the question of compulsory insurance.

3. The constitution of the Committee will be as follows:—

Chairman.

The Hon'ble Mr. N. J. Roughton, C.I.E., I.C.S.

Members.

Mr. Nurmahomed M. Chinoy, Managing Proprietor, The Bombay Garage, Bombay.

Mr. Ratan Mohan Chatterjee, M.B.E., Solicitor, Calcutta.

Secretary.

Mr. C. H. Reynolds, I.P.

4. The headquarters of the Committee will be at New Delhi, where it is expected to assemble on the 20th November 1936. The Committee will prepare and notify its programme in due course. Meanwhile persons who desire to be called as witnesses should apply in writing to the Secretary of the Committee *care of* the Department of Industries and Labour,

Government of India, New Delhi, giving their full names and addresses, together with a brief memorandum on the points on which they desire to give evidence.

5. The Government of India hope that local Governments and Administrations will afford the Committee all the assistance it may require and supply it with any information it may ask for.

S. N. ROY,
Offg. Secy. to the Govt. of India.

3. In accordance with the terms of the Resolution the Committee assembled in New Delhi on the 20th November 1936 and issued a questionnaire which is reproduced in Appendix 1 to this Report. The widest possible publicity was given to the questionnaire, and all local Governments, associations and individuals interested in this important matter were invited to come forward and submit their views.

4. The Committee then proceeded on tour on the 10th December 1936 and returned to Delhi on the 18th February 1937, where the hearing of evidence was concluded on the 25th February. Written evidence was tendered by all the local administrations in India, and in addition the Committee, in the course of its tour, examined representatives of the Governments of Bengal, the Central Provinces, Madras, Bombay, Sind, the Punjab, the United Provinces and Bihar. Oral evidence was tendered by 53 non-officials representing insurance interests, the motor vehicles distribution industry, companies, associations, both co-operative and otherwise and individuals engaged in the business of mechanical transport by road, commercial bodies, automobile associations, safety first associations and the general public.

CHAPTER II.

BRIEF ACCOUNT OF COMPULSORY INSURANCE IN OTHER COUNTRIES.

5. Before proceeding with the examination of the subject before us we think it useful to give a brief history of compulsory Great Britain.

motor insurance in Great Britain, on whose practice our proposals are based, and in certain other countries. The great increase in the amount of traffic on the roads of Great Britain together with a corresponding increase in the number of accidents brought the question of insurance against third-party risks into prominence in 1928. It was recognised that the general growth of motoring and the easy facilities for hire-purchase had led to a large increase in the number of motor owners with little financial backing. Insurance was abandoned by some as an economy with the result that, when a judgment was obtained against them for damages due to their negligence, the injured party was unable to obtain satisfaction. By that time compulsory insurance had been introduced in certain other countries, and it was felt that the question of its introduction into Great Britain should be included in the several transport and traffic problems to be considered by the Royal Commission on Transport which was appointed in 1928.

6. A draft Road Traffic Bill was prepared by the Ministry of Transport for the Commission's consideration and also for eliciting public opinion by circulation. Part IV of this draft bill provided for compulsory insurance against third-party risks by owners of public service vehicles in cases where the owner was not in a position to carry his own risk. There was no suggestion of making such insurance generally applicable to all motorists. Representations to the Commission were so forceful, however, that the Commission in its first report, "The Control of Traffic on Roads", dated the 19th July 1929, recommended that the case for compulsory insurance was so strong that an attempt must be made to deal with it. The Commission further made certain proposals based largely on the provisions of the New Zealand Act as to the lines on which legislation should be enacted. It should be made quite clear, however, that the principle underlying the Commission's recommendation was that compensation should be assured only in those cases where the motorist was legally liable. It was never suggested, at any time, that a person should receive compensation for an accident due to his own carelessness or fault, or where there had been contributory negligence on his part.

7. The Road Traffic Act, 1930, was the outcome of the report referred to above, in conjunction with a subsequent report on "The Licensing and Regulation of Public Service Vehicles". Part II of this Act embodies the general scheme for provision against third-party risks arising out of the use of motor vehicles. The main principles are as follows:—

- (a) It is an offence for any person (subject to certain exceptions) to use or to cause or permit any other person to use any motor vehicle on the road unless there is in force in relation to such user in respect of third-party risks a policy of insurance or a security which complies with the requirements of the Act (Section 35).
- (b) The policy must be issued by an authorised insurer and must cover third-party claims in respect of the death of, or bodily

injury to, any person, caused by or arising out of the use of the vehicle on a road, excepting in the case of persons in the employ of the assured or passengers in any vehicle in which they are not carried for hire or reward. (Section 36).

- (c) No insurance policy or security is valid for the purposes of the Act until a certificate of insurance or of security in the prescribed form has been issued to the person concerned by the insurer or giver of the security. [Sections 36 (5) and 37 (2)].
- (d) Any condition in the policy or security purporting to avoid liability in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim which is required to be covered by the Act, is of no effect, but this does not prevent the insurer or giver of the security from recovering subsequently from the assured or the person to whom the security was given (Section 38).

8. The Act came into force on the 1st January 1931, but before long it became apparent that the intention of the Act was being defeated in some cases by avoidance of liability on the ground of non-compliance with the conditions of the policy, or mis-statements, or suppression of material facts. It therefore became necessary to incorporate the following provisions in the Road Traffic Act, 1934:—

- (a) If judgment is obtained by a third-party in respect of a claim which is required to be covered under the 1930 Act, an insurance company cannot repudiate liability unless and until it has obtained from a Court of law a declaration that apart from any provision contained in the policy, it is entitled to avoid such liability on the grounds that the policy was obtained by the non-disclosure of a material fact or a representation of fact which was false in some material particular. (Section 10).
- (b) Any restriction of liability in a policy by reference to such matters as for example, the age or physical condition of the persons driving, the condition of the vehicle, the number of persons or weight or nature of goods carried, etc., shall be of no effect as regards claims required to be recovered by the 1930 Act. (Section 12).

In each of these two cases, however, the insurer can subsequently recover from the assured just as in cases falling under section 38 of the 1930 Act.

9. Part V, of the Saorstat Eireann Road Traffic Act deals with this subject. Indemnification in respect of injuries to the person is compulsory as in England, and there must be in addition indemnification in respect of damage to property up to the amount of £1,000. The indemnification can be either by

- (i) an approved policy of insurance,
- (ii) an approved guarantee, or
- (iii) an approved combined policy and guarantee.

10. The driving of a vehicle by a person other than any one covered by the policy or guarantee is an offence, and in such a case the owner is also

liable unless he can show that the vehicle was being driven without his consent, and, either he took all reasonable precautions to prevent such vehicle being driven, or the driver was a servant acting in direct contravention of his orders. In the case of a conviction under the foregoing, if the illegal and negligent use of the vehicle has resulted in death or injury, the criminal court passing sentence can inflict a fine which it may award as damages to the injured person, equal to the amount which would in the court's opinion have been awarded in an action for damages in a civil court. Payment of such a fine is a valid defence in any subsequent civil action; and in addition the plaintiff has the right of appeal if he is dissatisfied with the amount awarded.

11. In the event of the insolvency of any insured owner, all moneys payable to him under any policy or guarantee, shall be utilised in discharging in full all valid claims by third parties against him, and no part shall rank as assets or be available for the payment of his other debts. If the assured cannot be found, the injured may with the leave of the court proceed against the insurer direct. Again, injured parties have preferential rights against the deposit which the law requires an insurer to make in the event of his becoming bankrupt. Finally the insurer cannot raise the defence that the contract of insurance is void owing to fraud or misrepresentation, if the person responsible therefor has not been prosecuted and convicted under the relevant section of the Irish Act.

12. The New Zealand Motor Vehicles Insurance (Third Party Risks) Act, 1928, came into force on the 1st January 1929. Under this Act insurance against third-party risks is compulsory without any limit as regards the amount, but the insurance company is not liable to indemnify the owner against any claim,

- (a) in respect of the death of or injury to any person living with the owner as a member of his family or to any relative of the owner where the degree of relationship is not more than the fourth;
- (b) in respect of the death of or injury to any person in the service of the owner at the time of the accident; and
- (c) in respect of the death of or injury to any person driving or riding in a private vehicle.

An insurance policy, however, must cover fare-paying passengers in a vehicle plying for hire with limits of £2,000 in respect of any one passenger and £20,000 in any one accident. Liability cannot be avoided on the ground that the use of the vehicle was unauthorised.

13. Bad risks in the form of dangerous drivers are governed by section 14, which gives insurance companies the statutory right to apply to a stipendiary magistrate to cancel a driving licence held by the owner of any motor vehicle on the ground that the safety of the public is being unduly endangered.

14. In practice a motor owner at the time of applying for registration of his vehicle is given, in addition to his registration form, an insurance nomination form. On the back of this form is a list of all insurance companies who have notified the Registrar of their willingness to do business.

under the Act, and a schedule of the rates of premia for all types of vehicles. The owner is covered against all risks under the Act from the time of paying his premium. The nomination form is sent to the company selected by him and is valid for the period of registration; nor can it be cancelled either by the owner or the company unless the vehicle is destroyed or the consent of the Minister of Transport has been obtained.

15. Premium rates were fixed by an Order in Council after joint consideration of material statistics by Government and the insurance companies. The resultant rates are low. For instance third party insurance of a private motor car costs only seventeen shillings. For a 7-seater bus the premium is £7, with proportionate increases according to seating capacity.

16. From the report of the Commissioner of Transport it appears that up to 1934 the claims ratio to premium revenue varied from 65·94 per cent. to 89·57 per cent. In 1935, however, the ratio rose to 136·30 per cent. the premium revenue being £211,709 against £288,554 for claims paid and the estimated liability for outstanding claims. This we have been informed by an insurance representative, who desires to remain anonymous, is due to juries being unduly generous in their awards, and insurance companies are desirous of replacing them by an official who is expected to take a more impartial view of matters. It is probable that premium rates will be revised.

17. Insurance companies are required to deposit £10,000 before being permitted to operate. Other points of importance are:—

- (a) The contract of insurance continues notwithstanding any change in the ownership of the vehicle.
- (b) An insurance company cannot avoid its liability on the plea that the assured has made a false or misleading statement for the purpose of obtaining a contract of insurance. It can, however, in such cases recover from the assured who is, in addition, liable, on summary conviction, to a fine of £100.

18. Finally under an agreement made between the insurance companies and the Minister of Transport, any person who has been injured by an unknown vehicle in circumstances which would have resulted in a successful claim for compensation, had the vehicle been known, can apply to the Commissioner of Transport for consideration of his case, which is then referred to a Board of Arbitration. This Board consists of three members, one appointed by the claimant, one by the underwriters, and the third, a stipendiary magistrate, by the Commissioner of Transport. The arbitrators can, if they hold the claim to be proved, award compensation not exceeding £1,000 to any one person or £5,000 in the aggregate to the persons injured in any one accident. This amount is paid by the underwriters (insurance companies) in proportion to the premium revenue received by them.

19. The following summary has been compiled from copies of the Swedish Acts and other documents obtained for us by Mr. S. Sweden. Sundgren, Consul for Sweden, Bombay.

Third party insurance in Sweden became compulsory from the 1st January 1930, as a result of the growth of road traffic accidents. The right is given to an injured party to recover damages awarded against the owner or driver of a motor vehicle from the insurers. Liability extends

to damage to property as well as to the person, but is limited to 20,000 Swedish crowns to any one individual, 60,000 in any one accident, and 10,000 for property. In the case of passenger vehicles plying for hire, the limit is increased by Kr. 5000 for every seat over seven.

20. In order to secure that injured parties receive the compensation to which they are legally entitled, it has been laid down that where there is no insurance, or the insurer cannot be identified, all authorised insurers shall be jointly liable for the damages awarded. They are similarly jointly liable for any balance in a case where a policy has been taken out for less than the prescribed minimum, but can recover the same from the company issuing the policy, who in turn has a right to proceed against the policy holder. The cost of all such payments is apportioned annually amongst all authorised insurers according to their premium income. Further protection is afforded to third parties by rendering invalid conditions in insurance policies which relieve the insurer of liability in the event of driving by an unlicensed driver, drunkenness or gross negligence by the driver, and use other than in accordance with the terms of the policy; in such cases, however, the insurer has the right to proceed against the assured.

21. Such insurance is subject to state supervision and only duly authorised companies can undertake the business. Unless the articles of a company prescribe that its activities are limited to include only certain areas or classes of people, it cannot refuse to accept any proposal. Premium rates must be reasonable, and alterations in rates, with the reasons therefor, must be notified to the supervising Government department. Maximum rates can if necessary be fixed by statute. Competitive working costs must not be added to the ordinary cost loading. The allowance for profits must not exceed 5 per cent. of gross premia, and excess profits are transferred to a special fund to cover subsequent deficits or to form a basis for premium reductions.

22. In order to obtain a greater uniformity of settlement a Joint Claims Settlement Bureau has been set up with a Chairman appointed by the State and to this Bureau are referred all important issues capable of being settled out of court before an offer of settlement is made to the claimants. In the case of a contract of insurance which has been cancelled, liability continues for a period of 30 days from the date on which such cancellation is notified to the registration authorities. It is incumbent on a plaintiff to notify the insurer of any proceedings taken against an owner, so that the insurer can take part in those proceedings.

23. We are indebted for the following information to Dr. F. V. Tousek, Consul for the Czechoslovak Republic in Calcutta.

Compulsory insurance against third-party risks, including damage to property whether carried on the vehicle or not, came into force in March 1935. Insurance must be effected with a company permitted to do business in the Republic, and Government has the right to fix premium rates. It has on two occasions forced companies to reduce their rates. Certificates of insurance must be issued by companies within ten days from the payment of premium and must be carried on the vehicle when driven. A security deposit can be substituted for insurance, the limit in either case being fixed by Government. A person driving a car not covered by insurance can be compelled to pay to a special fund the premium required for his vehicle and an additional premium for the period he has

remained uninsured up to a maximum of three years. This fund is also augmented by contributions from insurance companies amounting to one per cent. of their annual premium revenue. It appears that discretionary grants are made from this fund to those injured, or the dependents of those killed, in circumstances where no claim for compensation lies. It can also be used for any purpose which has for its object the prevention of accidents, e.g., Safety First Education.

24. As far as can be ascertained Massachusetts is the only State which United States of has adopted compulsory third party insurance in America. respect of all classes of motor vehicles. Several other States have what might be termed "Financial Responsibility Laws" whereby after the driver of a car is involved in a certain type of accident he must prove his financial responsibility (usually in the form of an insurance policy or bond or deposit of securities) before he can again legally drive the car. This, however, as a witness before the Royal Commission on Transport observed, is not very consoling to a person who has been injured.

25. The majority, in fact almost all, of the States have, however, their own laws or regulations to provide that public carriers shall have adequate resources to meet claims made against them through negligently causing injury or death to human beings or loss or damage to property. It is only to be expected that with so many States in the Union there should be considerable variation in their respective laws, but they generally provide either for the filing of a surety company's bond, or a policy of indemnity assurance, with the Commission that controls State transport. In some cases the amount of the bond or insurance is specified by law, in others fixation of the amount is left to the discretion of the Commission which, in doing so, presumably is guided by the nature of the vehicle and the circumstances under which it is operated. Some States dispense with the bond or insurance if the transport operator can produce adequate proof of his ability to meet all claims for damages arising out of accidents. It is interesting to note that the State of Texas also requires insurance against claims under the Workmen's Compensation Act, and that Louisiana has included in its law a provision which is very similar to the substance of the English Law Reforms (Miscellaneous Provisions) Act, 1934, which we have discussed later in this Report. Several States have also realised the necessity of providing that the rights of the third-party shall be absolute, notwithstanding conditions in the policy to the contrary (cf., Section 88, Road Traffic Act, 1930, and Sections 10 and 12 Road Traffic Act, 1934.) A further point of interest is that, whereas the State of Vermont law provides that the insurer or surety may be made a co-defendant with the motor owner in a suit for damages, yet the North Dakota law prohibits such an action and even forbids any disclosure or comment to the jury that the insurer or surety is ultimately liable.

CHAPTER III.

RISKS COVERED BY INSURANCE.

26. The object of compulsory insurance is to secure that injured parties are not deprived of the damages due to them, owing to the low financial status of the owner or driver of a motor vehicle, where negligence is the cause of the injuries. Where there is no negligence on the motorist's part, he incurs no liability; and it is unreasonable to expect any one to insure against the consequences of an act in the performance of which he, or his agent, is not to blame. Accidents in the truest sense of the word are inevitable in every sphere of life and the responsibility for providing safeguards against them rests with the individual who may suffer from them. A considerable amount of misunderstanding exists at present among the general public as regards the responsibility for damage caused by motor vehicles when accidents occur: we therefore take the opportunity to emphasize the true position. .

CHAPTER IV.

ANALYSIS OF MOTOR VEHICLE ACCIDENTS IN INDIA.

27. We have, through questions 1, 3 and 4 of our questionnaire, endeavoured to obtain information as to the recent development of motor traffic in India, the growth of accidents during that development and the approximate extent to which different classes of motor vehicles are responsible for those accidents. We asked for information for the "last four years", but some provinces took this as applying to the period 1932-1935 inclusive, others to the period 1933-1936. Some again have furnished figures for calendar years, others for fiscal years. The latter differences in period may for all practical purposes be regarded as immaterial. The former, however, only enables us to give an approximately complete picture for the period of the three years 1933 to 1935.

28. The figures supplied to the Committee by local Governments and Administrations are given below in tabular form, followed by explanatory notes:—

TABLE A.

		1933.			1934.			1935.		
(a)	Vehi- cles.	F.	N. F.	Vehi- cles.	F.	N. F.	Vehi- cles.	F.	N. F.	
Assam . . .	2,649	35	80	2,823	38	107	3,051	50	122	
Bengal . . .	20,217	165	1,834	21,750	166	2,007	23,570	206	2,371	
Bihar . . .	6,118	51	242	6,617	73	212	6,767	92	253	
Bombay . . .	23,224	185	2,229	24,493	217	2,844	26,551	218	3,164	
Central Provinces . . .	5,945	54	395	5,909	56	400	6,278	68	463	
Madras . . .	17,849	179	748	18,962	172	949	19,522	214	1,000	
N.-W. F. Province . . .	1,731	41	128	1,862	50	130	2,194	49	135	
Orissa . . .	900	4	17	969	13	20	993	9	38	
(b) Punjab . . .	139	277	..	179	400	10,000	191	624		
Sind . . .	3,155	10	184	3,196	11	233	3,488	21	279	
(c) United Provinces	13,397	74	411	14,881	115	366	15,794	164	934	
Ajmer-Merwara . . .	..	..	..	773	4	38	916	10	47
Baluchistan . . .	1,758	2	40	1,949	6	56	2,149	3	35	
Coorg . . .	270	..	1	341	1	..	338	4	7	
Delhi . . .	2,403	15	25	2,128	33	84	2,704	10	149	
(d) . . .	99,616	954	6,611	106,653	1,134	7,846	124,315	1,309	9,621	

NOTES.—

- (a) F indicates fatal accidents, N. F. not fatal but resulting in injury to a human being.
 - (b) The Punjab Government submitted no figures of vehicles for the period under review. From their taxation returns, however, they were of opinion that the number of private cars, taxis, buses and lorries on the road, during the quarter ending 30th June 1936, was 9,671. They stated that police figures related to vehicles registered rather than to those actually in use. An approximate figure of 10,000 has been allowed.
 - (c) The United Provinces Government expressed doubt as to the accuracy of their figures relating to accidents owing to the divergencies in the replies submitted by the different districts.
 - (d) It is doubtful whether all provinces have included motor cycles in their totals.

We, therefore, cannot be reasonably sure that the figures supplied are correct in every particular.

29. Some time prior to our commencing our enquiries the Government of India asked all local Governments to furnish information as to the various classes of vehicles in their respective jurisdictions. It will be sufficient for our purpose if we quote the figures given for the year 1935-36.

TABLE B.

	Motor Buses (Passen- ger).	Motor Lorries (Goods).	Motor Taxis.	Motor Cars (Private).	Motor Cycles.	Total.
(a) Assam . . .	512	1,179	278	2,241	128	4,338
(b) Bengal . . .	4,765	..	..	18,646	1,139	24,550
(c) Bihar . . .	1,099	322	..	4,739	411	6,571
Bombay . . .	4,500	3,260	1,020	13,460	760	23,000
(d) Central Provinces	1,518	130	325	2,912	655	5,540
Madras . . .	3,621	964	319	13,254	1,364	19,522
(b) North-West Frontier Province.	3,530	..	..	4,783	1,637	9,950
Orissa . . .	157	16	92	508	35	808
Punjab . . .	1,349	5,774	604	7,259	1,573	16,559
Sind . . .	541	414	346	2,424	492	4,217
(a) United Provinces	4,132	273	746	11,148	1,354	17,653

NOTES--

- (a) The figures are for the calendar year 1935.
- (b) Goods lorries are included with passenger buses and taxis with private cars.
- (c) Taxis are included with motor buses.
- (d) The figures are up to August 1935.

30. Similarly we have been able to extract from Police Annual Administration Reports certain information which helps to throw some light on the volume of motor accidents in the country and the number of persons killed and injured in those accidents. Assam, the North-West Frontier Province, and Bengal Presidency proper make no reference in their reports, but a tabular summary of the remainder is indicative of the increasing extent of the loss of life and of other human injury arising out of the growth of motor traffic.

TABLE C.

1933.

1934.

1935.

	Total Acci- dents.	Kill- ed.	In- jured.	Total Acci- dents.	Kill- ed.	In- jured.	Total Acci- dents.	Kill- ed.	In- jured.
Bihar and Orissa	356	48	Not stated.	329	83	Not stated.	461	91	Not stated.
Bombay City	3,500	70	1,739	4,052	85	2,001	4,720	86	2,278
Bombay Presidency (excluding City).	1,047	124	1,427	1,223	112	1,383	1,450	141	1,399
Calcutta	Not stated.	99	1,676	Not stated.	80	1,864	Not stated.	98	2,173
Central Provinces	599	61	Not stated.	691	58	Not stated.	867	68	463
(a) Madras	677	154	Not stated.	830	169	Not stated.	920	207	Not stated.
Punjab	410	139	272	579	191	371	805	204	777
(b) Sind	Not stated.	13	196	Not stated.	13	301	Not stated.	13	299
United Provinces	Not stated.	143	832	Not stated.	152	800	Not stated.	167	877
	851	6,142		943	6,725		1,075	8,265	

NOTES—

(a) The figures given show the number of fatal accidents only, not the number of lives lost.

(b) Karachi City only.

Deaths, it will be seen from these figures, have increased by over 25 per cent. and reported injuries to human beings by nearly 35 per cent. in two years. The corresponding increase in vehicles is only about 12½ per cent.

31. If we take the highest figure for vehicles, and the number of accidents instead of persons where the number of killed or injured is not given, we arrive at the following result:—

TABLE D.
Statistics for 1935.

(The letters in brackets indicate the table from which the figures are taken.)

		Maximum number of vehicles.	Persons killed.	Persons injured.
Assam	.	(B) 4,338	(A) 50	(A) 122
Bengal	.	(B) 24,550	(A) 206	(A) 2,371
Bihar	.	(B) 6,767	(A) 92	(A) 253
Bombay City	.	(B) 26,551	(C) 86	(C) 2,278
Bombay Presidency	.	(A) 26,551	(C) 141	(C) 1,399
Central Provinces	.	(A) 6,278	(A) 68	(A) 463
Madras	.	(A) 19,552	(A) 214	(A) 1,000
North-West Frontier Province	.	(B) 9,950	(A) 49	(A) 135
Orissa	.	(A) 993	(A) 9	(A) 38
Punjab	.	(B) 16,559	(C) 204	(C) 777
Sind	.	(B) 4,217	(A) 21	(C) 299
United Provinces	.	(B) 17,633	(C) 167	(A) 934
Ajmer-Merwara	.	(A) 916	(A) 10	(A) 47
Baluchistan	.	(A) 2,149	(A) 3	(A) 35
Coorg.	.	(A) 338	(A) 4	(A) 7
Delhi	.	(A) 2,704	(A) 10	(A) 149
		1,43,515	1,334	10,305

32. In 1935, therefore, taking the most liberal estimate, 1,43,515 motor vehicles were concerned in at least 1,334 deaths and in injuries to at least 10,305 other persons. This represents on an average 93 deaths and 718 persons injured per 10,000 vehicles. It is, however, safe to say that the number of vehicles actually in use was far less cf. note (c) to Table A, and it is also probable that, owing to defective reporting, more people were killed and the number of killed and injured, particularly the latter, is understated. It is a reasonable assumption that the actual ratio of automobile deaths per 10,000 vehicles in India in 1935 was over 100.

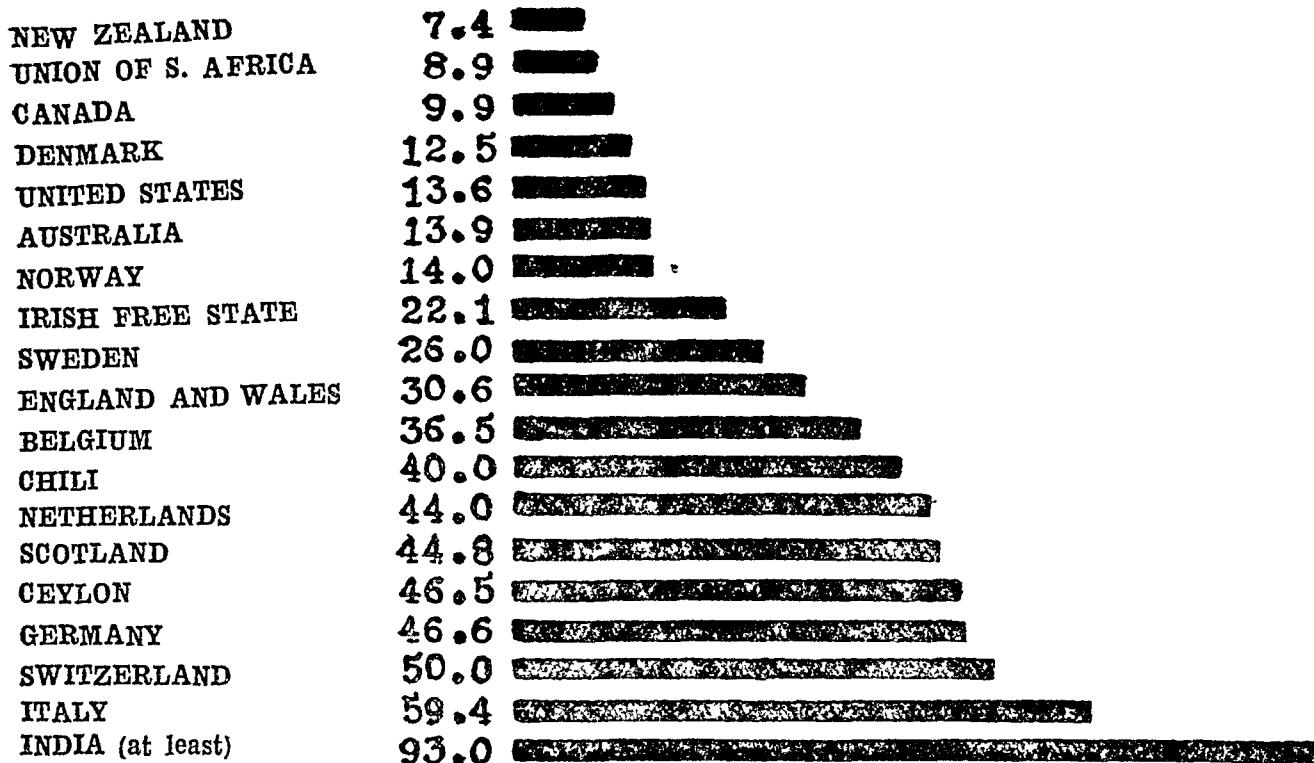
33. We reproduce below a chart of the incidence of automobile deaths in Comparison with other countries which we have extracted from "Automobile Facts and Figures" 1936 Edition, published other countries. by the Automobile Manufacturers Association, Inc., New York. This chart is based on figures collected by the National Safety Council and refers to the year 1935.

The same booklet estimates the number of motor vehicles in British India including Burma in 1935 at 104,852 which is a useful check on the figures given by us in Table A.

WORLD MOTOR VEHICLE ACCIDENTS

(FIGURES FROM NATIONAL SAFETY COUNCIL.)

Automobile deaths per 10,000 motor vehicles.



The portion relating to India we have added ourselves. Its position in the chart states in graphic form the most important argument for the introduction of compulsory insurance. A similar chart illustrating the incidence of fatal accidents in the various provinces is given below. It is based, except for the cities of Bombay, Madras and Calcutta, on statistics furnished by local Governments in Table A. In the case of the Punjab we have accepted the local Government's opinion that the number of vehicles in use is about 10,000 *vide* note (c) to Table A.

Automobile deaths per 10,000 vehicles, in 1935, according to Provinces..

Population
Per Vehicle.

16

BALUCHISTAN	13.9	190
MADRAS CITY	35.0	114
DELHI	36.9	230
CALCUTTA	55.5	84
SIND	60.2	1116
(a) BOMBAY CITY	68.8	72
(b) BOMBAY PRESIDENCY	82.1	717
BENGAL	88.3	2510
ORISSA	90.6	
UNITED PROVINCES	103.8	3060
CENTRAL PROVINCES	108.4	2220
(c) MADRAS PRESIDENCY	109.6	2170
BIHAR	135.1	5570
ASSAM	163.8	2820
PUNJAB	191.0	2060
N.W.F. PROVINCE	223.3	1030

(a) Including Bombay City.

(b) Including Calcutta.

(c) Including Madras City.

It will be seen that there is almost as much variation in Indian provinces as there is in the different countries of the world. There is no formula as far as we can see to explain this variation. It depends neither on the number of vehicles per road mile, nor on the road mileage per square mile of area. The only conclusion that possibly can be drawn is that the incidence of mortality from motor accidents tends to increase with the density of population per motor vehicle. But as the figures show, there are exceptions to this rule.

34. One reason that has been suggested is the low standard of roads, their narrowness and poor surfacing. But this does not explain why the Punjab, which has probably a much better surfaced road system than any other province, has so much higher an incidence of fatal accidents. Some witnesses from that province, however, lay the blame on the dusty portions which lie on either side of the carriage way, and the poor visibility when one vehicle passes another. The obvious answer to this is that speed should conform to visibility.

35. Lack of road sense on the part of pedestrians is another argument put forward. "Road sense" is a term of recent origin, but it should not be allowed to develop into a catchword. There is possibly a tendency amongst the motoring community to regard it as that sense which impels pedestrians to get out of the way of motorists. At the same time it must not be forgotten that the motoring community is probably less than one per cent. of the total population of India, so that there must be road sense on both sides, and the standard of driving must be such as will meet circumstances that normally arise from other users of the road in their present mentality. Evidence has been freely given that the standard of road sense among drivers is low.

The Punjab Government states—"Among the drivers of public motor vehicles, the standard of competence is fairly high, so far as ability to control the vehicle is concerned, but there is much ignorance regarding the refinements of driving and road manners, and a good deal of carelessness.".

The United Provinces Government states—"As to the standard of driving, while there is no doubt that there is much room for improvement, it is suggested that this is not due so much to the lack of ability required to pass a driving test as to lack of imagination, lack of road sense and courtesy, and ignorance and forgetfulness of the rules of the road".

36. The extent to which the mechanical unfitness of vehicles contributes to accidents is uncertain owing to the fact that statistics on this point have not, as a rule, been kept. Some provinces have stated that no figures are available. Those given by others show great variations. The United Provinces and Bengal for example were only able to report three known cases apiece in four years. The Central Provinces reported 13 from public vehicles in 1934, and 11 from private and 24 from public in 1935. Bombay City on the other hand gave a four years total of 209 from private cars, 80 from taxis, 21 from buses, and 130 from goods lorries. From the Bombay City Police Administration Report for 1935 we quote the following extract—

"Personal inspections were carried out particularly of Heavy Motor Vehicles, of vehicles running on the roads. As a result 546 vehicles, i.e., 198 cars, 264 trucks, 80 lorries, and 4 motor cycles were found to have serious mechanical defects due to

overloading and faulty maintenance, and registrations of the vehicles were cancelled till defects were rectified. In addition 2,043 heavy motor vehicles, trucks, and omnibuses were inspected at the Head Police Office. On an average each vehicle was inspected twice before certified as fit.”.

37. Although we have not been able to obtain figures from every province, it is clear that fatal accidents occur to a much greater extent from public than from private vehicles. This accounts for the fact that the incidence is much higher in mofussil than in urban areas. In the Punjab which has less public vehicles than private, there were in 1935, 169 fatal accidents from the former class and 22 from the latter. This may of course be an exceptional case, but we think that similar conditions obtain in other provinces, although perhaps not on the same scale. There is no doubt that this state of affairs is very largely due to the way in which public road transport has been allowed to develop, a subject which will be discussed later.

38. The extent to which negligence on the part of drivers plays a part will be found in the section immediately following.

39. Unfortunately statistics are not complete enough for us to apportion responsibility of accurately the blame for accidents among the various different classes of classes of motor traffic; but the table below, which has been compiled from figures supplied in the main by local Governments gives a sufficiently accurate picture.

ONE ACCIDENT PER

	1933.			1934.			1935.				
	Private Cars.	Taxis.	Buses.	Private Cars.	Taxis.	Buses.	Private Cars.	Taxis.	Buses.	Goods Lorries.	
Assam (a).	45	24	14	12	38	18	11	34	18	10	10
Bihar	39	15	7	8	39	17	8	31	24	9	7
Bengal (including Calcutta) (c)	12	5	4	30	11	6	5	30	9	6	34
Calcutta only (c)	13	3	8	..	12	4	10	10	4	9	..
Bombay City	11	3	2	4	10	3	2	4	2	2	4
Bombay Presidency	18	18	15	5	12	15	10	12	11	4	
Central Provinces				Not known	22	10	10	19	7	7	7
Madras Presidency (excluding Madras City)	40	6	17	6	30	25	12	25	6	12	7
North-West Frontier Province (d)	29	11	9	9	25	10	9	28	13	10	10
Punjab (e)	..	..	..	..	..	..	..	24	8	8	8
Karachi City	26	17	8	2	19	11	11	1	13	9	2
United Provinces (b)	..	..	..	..	..	..	..	68	5	29	2
Baluchistan	65	..	70	40	103	..	57	10	120	..	39
Delhi (f)	18	13	13	18	14	10	10	14	11	11	15
Compare with Great Britain	..	..	..	..	21	..	10	14	..	..	..

NOTES—

(a) Assam can only express an opinion that 30 per cent. of their accidents are caused by private cars, 5 per cent. by taxis, 20 per cent. by buses and 45 per cent. by goods lorries. Calculations are based on this opinion.

(b) The United Provinces only give totals for four years combined. An average has been given based on the total numbers of the different classes of vehicles on the road.

(c) In Calcutta accidents from lorries and private cars are shown together.

(d) In the North-West Frontier Province lorries and buses are shown together.

(e) The Punjab figures are based on the local Government's estimate of vehicles actually on the road in 1936. In addition only figures of accidents caused by the whole class of public motor vehicles are given and they have been taken as applying to taxis, lorries and buses.

(f) In Delhi taxis and buses, and also private cars and lorries are grouped together for accidents.

40. An examination of these figures suggests that the incidence of accidents due to commercial vehicles (taxis, buses and lorries) is, as a rule, greater than that of private cars. But this must, in part, be due to the larger mileage of public vehicles. The next inference is that the increase in reported accidents is proportionately greater than the increase in vehicles on the road, though it is possible that the improvement in reporting is partly responsible for this. It may be that, with the present facilities for the purchase of cheap second-hand vehicles, there is gradually coming into existence a class of car owner possessed of a less degree of responsibility to other users of the road than existed in the car owner of say five years ago. The number of unroadworthy vehicles is probably increasing. The more powerful engines and greater speed of the modern car are factors which also contribute their quota as is remarked in the Punjab Police Annual Administration Report for 1935:—

“The increase (in the number of public vehicles registered) is not sufficient to account for the disquieting rise in accidents.

There can be little question that excessive speed, facilitated by the powerful engines of modern vehicles, is largely responsible.”

41. Our general conclusion is that all classes of vehicles are concerned in the increase in accidents of all kinds, but the greater responsibility for fatal accidents rests on public vehicles.

42. We would draw attention to the disparity between the figures for the cities of Calcutta and Bombay and those for mofussil areas, particularly with regard to private cars. More accidents in a congested city area must normally be expected, but there is every reason to believe that accidents are reported to a much greater degree in such areas than they are elsewhere. This belief finds support in the fact that the incidence of fatal accidents in the cities of Calcutta, Bombay, Madras and Delhi is much lower generally than in the mofussil.

43. Many witnesses have stated before us that in their opinion less serious accidents are not reported to any appreciable extent, and that, in such cases, some amount is paid, not as an adequate compensation to the injured person, but to prevent subsequent official enquiries and a possible charge of rash driving. One witness from the Punjab went so far as to state, that in spite of the provisions of the law, he saw no necessity of reporting an accident to the police, as it would only result in his having to make frequent appearances in court. His scruples would be satisfied by paying something in the way of compensation to the dependants of the deceased person. Any comment on such an assertion is unnecessary.

44. We are of opinion, however, that if all were reported, the ratio of non-fatal to fatal accidents, especially in the mofussil, would be much greater than at present appears from Table A.* It may be noted that, whereas on the figures supplied the ratio of reported fatal to non-fatal accidents in British India is one to 8, the corresponding figures in Great Britain are one to 24.

45. It is unfortunate that, on the evidence before us, we have been unable to determine the extent to which negligence on the part of the drivers of any class of motor vehicles has been the cause of accidents, but the following general observations throw some light on this aspect of the question:—

Prosecutions for negligent driving are increasing more rapidly than vehicles. In 1933, with 2,649 vehicles on the Assam. road, there were 72 such prosecutions, or roughly speaking, one to every 39 vehicles. The corresponding figures for 1935 are 3,051, 103 and one to 29. The percentage of convictions has increased from 36 per cent. in 1933 to 47 per cent. in 1935.

Prosecutions for negligent driving have varied very little between 1932 to 1935. In 1933, there were 264 prosecutions to Bihar. 6,118 vehicles, in 1935, 264 to 6,767. The former works out at one prosecution to 23 vehicles, the latter at one to 26. The percentage of convictions is well over 60 per cent. Mr. Hare, the Superintendent of Police, Hazaribagh, stated that in 1935 he had 44 accidents in his district out of which seven resulted in successful criminal prosecutions. There were six people killed and eight injured, who would have had a claim for compensation.

An alarming feature is the fact that fatal accidents have increased from 64 in 1932 to 112 in 1936, in which year 64 were caused by private cars (an increase of 30 over the preceding year) 7 by taxis, 9 by buses and 32 by lorries. Mr. Herapath, Deputy Commissioner of Police, and Mr. Sheehy, Superintendent of Police, Motor Vehicles Department, expressed the opinion that a *prima facie* charge of causing death by a rash or negligent act lay in the cases of 27 drivers of private cars, 2 drivers of taxis, 2 of buses and 9 of lorries. The increase is out of all proportion to the increase in vehicles on the road.

On an average during the three years 1933-35, the driver of one vehicle in 36 were charged under one of the sections of the law relating to rash or negligent driving. Over 65 per cent. of those cases ended in conviction. In the same period, out of the drivers concerned in 240 fatal accidents, 78 were charged under section 304-A, Indian Penal Code. During the same period approximately one goods lorry in 30 was concerned in a fatal accident. The Commissioner of Police stated in his Administration Report for 1934—

“The most noticeable feature is the constant increase in fatalities from commercial vehicles. There is no doubt that this is due very largely to lack of proper maintenance and overloading. * * * * Compulsory insurance against third party risks for heavy vehicles will probably shortly be introduced and this should help to effect an improvement.”

In his 1935 Report he stated—

“An analysis of fatal accidents * * * shows very little difference from last year. * * * It is to be hoped that

compulsory insurance for heavy motor vehicles and the increased taxation on them will result in a considerable reduction of those semi-decrepit commercial vehicles to which I referred last year."

We note here that although fatal accidents from other classes of vehicles showed a large increase in Bombay City during 1936, those due to goods lorries and trucks fell from 43 to 32.

On an average the driver of one vehicle in 14 has been prosecuted in the Bombay Presidency, during the period 1933—1935 for negligence in driving a motor vehicle. Out of 2,714 such prosecutions 85 per cent. have ended in conviction.

The Deputy Commissioner of Police, Public Vehicles Department, Calcutta, has reported—

"In 1935, 2,271 accidents concerning motor vehicles involving deaths or injuries were reported. The statistics show that 343 drivers were prosecuted in 1935 for negligent driving. Working on these figures it appears that in about 15 per cent. of serious accidents the drivers were considered responsible. I regret that no other figures are available for forming a more accurate estimate, but it is probable that the percentage quoted is unduly low."

The figures of vehicles in Calcutta reported by the Commissioner of Police apparently include those in suburban areas outside the City Police jurisdiction. The Deputy Commissioner of Police subsequently reported that there were garaged in Howrah 539 private cars, 36 motor cycles, 113 buses, 9 taxis and 409 lorries. If these are deducted, there would be in the City jurisdiction at least 13,191 private cars, 826 motor cycles, 1,055 taxis, 533 buses and 2,043 lorries in 1935. Private cars, cycles and lorries were responsible for 60 deaths, or one to 268 vehicles. Taxis were responsible for 10 deaths, or one to 106 vehicles. Buses were responsible for 28 deaths, or one to 19 vehicles. Outside Calcutta there appear to be approximately 7,500 vehicles. In 1935 it was found necessary to prosecute 757 drivers for negligent driving, i.e., the driver of one vehicle in 10. Convictions were obtained in 90.5 per cent. of the cases.

During each of the three years 1933 to 1935, prosecutions for negligent driving, etc., have been instituted against the drivers of one vehicle in 26. Convictions have been obtained in 57 per cent. of the cases. The following are extracts dealing with motor vehicle administration from Police Annual Administration Reports:—

1933.—"The number of prosecutions under the Indian Penal Code for causing death or hurt was 120."

1934.—"The total number of prosecutions under the Indian Penal Code for causing death or hurt was 110."

"In 10 (out of 20 fatal accidents in the Nagpur District) the prosecution of the driver was undertaken; convictions were obtained in 5 cases."

1935.—“An attempt has been made to classify accidents with the following results:—

		Private cars.	Public vehicles.
Rash driving	.	19	62
Negligence or carelessness of drivers	.	40	105
Fault in mechanism	.	11	24
Negligence of other vehicles	.	28	55
Negligence of pedestrians	.	106	78
Negligence of cattle owners	.	28	82
Children playing on roads	.	8	16
Miscellaneous	.	104	101
		<hr/>	<hr/>
		344	523
			”

From this it can be said that culpability undoubtedly lay on the driver in one private vehicle accident out of 6, and in one public vehicle accident out of 3, while there must be a number of other cases in which the driver had a civil, though not a criminal, responsibility.

In Madras City in the four years 1932—1936 it has been found necessary to prosecute 446 drivers for rash or negligent driving. This works out at one prosecution for every 50 vehicles. Convictions were obtained in 72 per cent. of the cases. In the mofussil 1,224 drivers were prosecuted during the same period, or one prosecution to every 44 vehicles. The following extract is quoted from the Madras City Police Administration Report for 1935:—

“The following tabulated statement gives the figures of accidents in which motor vehicles were concerned in the years 1933, 1934 and 1935:—

	1933.	1934.	1935.
Total number of accidents caused by motor vehicles	361	342	329
Number treated as mere accidents	257	231	229
Number dropped for want of evidence	16	11	8
Number ended in convictions	62	74	67
Number acquitted	12	6	8
Number withdrawn	8	11	2
Number pending trial	6	9	15

Of the 20 fatal accidents reported 10 were due to private motor vehicles, 5 to lorries, 4 to buses and one to a motor cycle.

In the private motor vehicle cases, * * * * * motorists were considered to be definitely at fault in 4, and the drivers were charged. Two cases ended in discharge, the witnesses being tampered with in one, and the magistrate holding that the occurrence was purely accidental in the other. The remaining two cases are pending trial.

In the lorry cases, the drivers concerned were charged in 3 cases; 2 were convicted and one is still under trial.

Of four bus cases * * * two were charged but the magistrate found that one was a case of accident and discharged the accused, The remaining case is pending trial.”

The fact that a *prima facie* case under Section 304A of the Indian Penal Code existed in 9 out of 20 fatal accidents is significant.

Unfortunately the figures for the whole province of prosecutions for negligent driving are not readily available, but in Punjab. the Lahore Tahsil alone in the year 1936, 115 cases were instituted under the relevant sections of the Indian Penal Code, and 151 under Section 5 of the Motor Vehicles Act. Out of these 82 and 63 have ended in conviction, and 7 and 79 are still pending. The percentages of convictions to cases tried are 75·9 and 87·5.

There are 2,881 motor vehicles in the Lahore District, so that even if these are all in the one tahsil, which cannot be the case, it will be seen that on an average the driver of one vehicle in 11 has had to be prosecuted. The actual figure must be much lower.

The mortality caused by public vehicles in the Punjab is alarming. In 1934 there were 147 fatal accidents caused by public vehicles as against 32 by private vehicles. For 1935 the figures are 169 and 22. In the latter year, if we accept the Punjab Government's estimate of public vehicles in the province as correct, there must have been one such accident to every 29 public vehicles. In spite of this fact, the Secretary of the Punjab Motor Union has told us in his memorandum: "The supposed horrors and suffering, resulting from the vast number of accidents occurring at tremendous speed in quick succession exist nowhere."

The following extracts from Police Annual Administration Reports throw very valuable light as to the part negligence plays in motor vehicle accidents in the province:—

1933.—"The number of motor accidents reported was 410. These accidents resulted in 139 deaths and less serious injuries to 272 persons. There were 347 prosecutions under the Indian Penal Code."

1934.—"The number of motor accidents reported during the year was 579. These accidents resulted in 191 deaths and less serious injuries to 371 persons. There were 482 prosecutions under the Indian Penal Code. * * * *

Drivers of public vehicles were responsible for 83 per cent. of the accidents leading to fatalities and 73 per cent. of the total. An indication of the recklessness of some drivers of public vehicles is afforded by the fact that in 14 cases such vehicles collided with level crossing gates, 11 of the drivers concerned being convicted."

1935.—"The number of motor accidents reported during the year was 805. These resulted in 204 deaths and injuries to 777 persons. There were 722 prosecutions under the Indian Penal Code. Drivers of public vehicles were responsible for 88 per cent. of accidents leading to fatalities and 75 per cent. of the total.

The Superintendent of Police, Gujrat, notes that the authorised speed is exceeded by almost every driver on the four organised services plying in that district. The Superintendent of Police, Jhelum, also comments on the excessive speed of public vehicles running on fixed timings and notes

that he has personally in many cases found that such vehicles were travelling at 45 miles per hour. The dangerous overloading of public motor vehicles is another serious offence which contributes to accidents. It occurs largely by night when drivers hope to escape detection and this has been met to some extent by nocturnal holdups. The Superintendent of Police, Ferozepore, reports that on several occasions grossly overloaded lorries were found to be running with no number plate and drove directly at any police officer who attempted to stop them."

The number of drivers prosecuted under the different sections of the law for negligence in driving motor vehicles was

Sind.

205. This works out at one prosecution per 60

vehicles. Convictions were obtained in 70 per cent. of these cases. Mr. Ray, the District Superintendent of Police, Karachi, has informed us that in connection with 7 out of 18 fatal accidents in 1935-36, prosecutions under Section 304A, Indian Penal Code, had been instituted.

According to a statement supplied by the United Provinces Government, 6,410 drivers were prosecuted in United Provinces. four years for negligence or rashness in driving a motor vehicle. If this statement is correct, the average prosecution is one to every 9 vehicles. Convictions were obtained in 70 per cent. of the cases.

In this province, 306 prosecutions were instituted in four years. or one North-West Frontier to every 22 vehicles. Convictions were obtained in Province. 59.8 per cent. of these cases.

There were 120 prosecutions in 1933, 149 in 1934 and 184 in 1935. This represents one prosecution to every 15, 13 and 12 Baluchistan. vehicles respectively. Convictions were obtained in over 80 per cent. of the cases.

There were 64 prosecutions in 1934 and 100 in 1935, convictions being obtained in 39 and 88 cases respectively. In the Delhi. former year there was one prosecution to every 42 vehicles and in the latter one to every 30.

46. We think it is safe to assume that by far the greater proportion of prosecutions of negligence or rashness in driving have been direct *sequelae* of actual accidents. We have little doubt that the inference can be rightly drawn that negligence or rashness in driving is increasing to an alarming extent and in fact is responsible for a very appreciable proportion of the accidents causing loss of life or injury to the person. Our conclusions are, therefore, that:—

- (1) there is an unduly high rate of accidents in proportion to the number of motor vehicles in the country, particularly as regards fatal accidents.
- (2) accidents are increasing to a greater extent than motor vehicles;
- (3) all classes of motor vehicles are responsible for this increase;
- (4) an appreciable portion of blame can be attached to drivers.

47. We have endeavoured in the foregoing to summarise the extent of motor vehicle accidents in India in order to compare the incidence, particularly of those ending fatally, with that existing in other countries, the extent to which different classes of vehicles are involved, and the degree of liability attached to drivers. It must be remembered however that this summary is based on statistics in some cases inadequate and in others somewhat unreliable. We are strongly of opinion that the time has come when more than a passing attention should be given to this important matter affecting public safety. An attempt has been made in some provincial Police Administration Reports to discuss it. Others merely content themselves with giving bare figures of killed and injured. Others again say nothing. The Safety First Association of India in their memorandum to us state: "The present system of reporting (accidents) cannot be satisfactory since it is made with the object of ascertaining the responsibility and not the cause. Accident reporting is the foundation of accident prevention in determining the most serious hazards in directing prevention work, and in measuring its effectiveness". Professor Gadgil of the Gokhale Institute of Politics and Economics told us that from his own enquiries he found that accident records, as at present maintained, were not of such a character as to warrant any definite statistical conclusions being drawn from them. Other official witnesses whom we have questioned on this point have invariably replied that co-ordination in the system of reporting does not exist. We, therefore, recommend that serious consideration be given to the question of ensuring that accidents are reported in a uniform manner, so that at the end of a year it shall be possible to analyse them in detail. It is only after definite knowledge of the causes underlying their occurrence, that measures can be taken for their prevention. In some countries, we believe that printed forms are provided for the reporting of accidents, thus facilitating the annual compilation of most useful information. We believe that the adoption of this course in India would lead to useful result with no appreciable increase of work. We recommend that this be done.

CHAPTER V.

THE EXTENT TO WHICH THE LEGAL LIABILITY FOR DAMAGES IN ACCIDENTS IS AT PRESENT DISCHARGED.

48. It necessarily must be a matter of considerable difficulty to determine the extent to which the victims of motor accidents succeed in obtaining compensation at present, as no statistics are maintained, nor is it easy to determine whether in particular cases any legal liability lies on the owner or driver. We give below typical opinions regarding the settlement of claims which have not been brought to Court. The Ratnagiri District Co-operative Motor Owners' Association, which insures 194 buses belonging to its members, mentions 12 claims settled for Rs. 1,457 in the last 4 years. The Bengal Bus Syndicate asserts that compensation is paid in practically every case, and the Patna and Dinapore Bus Associations, that compensation was usually paid by owners to settle matters amicably. The evidence of these associations is not supported by other evidence, and must be regarded as biased. The Bombay Electric Supply and Tramway Company gives figures of compensation paid as an act of grace since 1932, and there are doubtless other concerns of standing whose record in this respect is satisfactory. The only positive evidence that claims are made and paid to any extent comes from the Principal Agent at Karachi to the Ocean Accident and Guarantee Corporation, who is of opinion that, where third party claims for compensation lie, they are generally made. His Company had had 75 such claims in the last 12 months. We observe that this evidence and that of the Ratnagiri Co-operative Association relates to areas in which insurance is at present compulsory, and does not affect our conclusions as regards other areas.

49. There is a very great preponderance of opinion, both official and non-official, supporting the contrary view. Compensation generally consisting of small sums is at times paid to avoid criminal liability either by way of inducement to potentially adverse witnesses, or in the more regular procedure of compounding cases under sections 337 and 338 of the Indian Penal Code. Clearly this inducement to pay compensation does not exist in the case of serious accidents where prosecution, if negligence on the part of the driver is established, is almost inevitable. Such local Governments as express an opinion are unanimous on the point, and they are supported by a large body of other evidence of which we select a few examples. The Gokhale Institute of Politics and Economics has studied for many years conditions of public transport in the Bombay Deccan, and has made a special *ad hoc* investigation in view of our enquiry. The Institute gives a table based on enquiries made from 98 bus owners operating 268 buses in 3 districts. According to this Rs. 600 were paid in respect of 29 cases which did not come to Court, an average of a little over Rs. 20 per case. The conclusion of the Institute is that "Victims of accidents are usually ignorant of their rights; hence most potential claims are settled for small sums." Much weight must be attached to this opinion which is based on scientific enquiry. The Proprietor, Gulshan Motor Service, knows of a case in which 3 persons were killed and 9 injured, but were unable to obtain compensation probably owing to absence of insurance. The Punjab Motor Dealers' Association says that cases in which compensation is paid are very few, indeed negligible. A former Licensing Officer, Lahore, says that the public is generally

unaware of their civil rights in the matter of making claims for compensation. The Karachi Indian Merchants' Association considers that cases occur of compensation without recourse to a court but are rare. The Manager, Bombay Garage, Nagpur, thinks that the practice is that when there is a serious accident the bus owner goes to the injured party and promises something—say Rs. 25 or Rs. 30 to persuade them not to file a suit. The President, Motor Owners and Drivers Association, Jubbulpore, observes that, where there are accidents, in most cases the injured party does not get compensation. The South Indian Chamber of Bus Owners, Madras, states that in 90 per cent. of accidents no claims are made through ignorance or fear of losing cases. The Sub-Divisional Officer, Chatra (Bihar), endeavoured to get compensation in 2 cases last year, but failed as owners refused on the ground that the drivers were responsible. (This statement of the law is presumably incorrect.) The Secretary, Taxi Drivers' and Owners' Union, Delhi, says that in small cases a little compensation is paid but not for big accidents as owners cannot then afford to pay. The United Provinces Commissioners report only one case of compensation in which Rs. 25 were paid to a child for the loss of a hand.

50. Our conclusion is that compensation sometimes is paid without recourse to legal action in the case of minor accidents by public vehicles, though it is generally inadequate; but that such payments are rare for serious accidents.

51. Owing to the shortness of the time at our disposal and the consequent impossibility of a systematic examination of the records of civil courts, we have been unable to obtain full information regarding the fortunes of litigants in civil courts. Such information as is available relating to the last 4 years is given below:

In Bengal 54 cases were instituted from 1932 to 1935, in 35 of which compensation was awarded.

Six cases are reported by Government, 3 in 1932 and one each in 1933, 1934 and 1935. No compensation was paid in any. The President, Motor Owners and Drivers Association, Jubbulpore, knows of 4 cases in the last 2 years of which 3 were unsuccessful, partly owing to the inability of the plaintiffs to conduct their cases properly.

In the Court of Small Causes, Madras, 28 suits have been filed since 1932. In 10 decrees have been passed and one suit is pending. Rs. 2,018 was decreed of which only Rs. 732 has been paid into Court. In the High Court, 18 cases were instituted of which 7 were dismissed, 6 of which were settled out of court. Compensation was awarded in 7 cases while 4 are unfinished. One witness alleged that a decree for Rs. 10,000 obtained in the Coimbatore District was defeated by fraudulent bankruptcy.

In the Bombay High Court, 8 cases have been instituted, of which one has been decreed for Rs. 2,000, one dismissed, and 6, 2 of 1935 and 4 of 1936, are pending. Of these one is a claim for over a lakh which we understand has since been settled out of Court for Rs. 15,000. 21 cases were instituted in the Small Causes Court, Bombay, since 1933 of which 2 were dismissed, 8 settled, while in 11 damages amounting to Rs. 4,110 were awarded and

Rs. 3,374 paid. In the mofussil in the last 4 years 42 cases have been instituted in 10 districts of which 7 were settled out of court, 7 were dismissed, 22 are pending, and in 5 damages amounting to Rs. 8,715 were awarded. The United Provinces Government report 18 claims from

United Provinces.

5 districts of which sixteen succeeded. The

amounts are not stated, but three of the biggest claims for Rs. 2,000, Rs. 750 and Rs. 700 have not yet been realised.

Bihar.

In Bihar, 3 suits have been instituted in 4 districts, in one of which only a decree was

obtained. Compensation has been awarded in 2 cases in Assam, while

Assam.

in Delhi no claims have been made in the

Delhi.

last 4 years.

52. It must also be remembered that, although the owner of a motor vehicle is, in law, jointly responsible for the wrongful acts of his servant, who is driving, it may not be always possible for an injured party to prove the relationship between the owner and driver. In the case of hired vehicles further difficulties arise. If a car is hired for a particular journey with a driver the responsibility rests with the owner of the vehicle. Where a contract of hire purchase is in operation, the responsibility will sometimes rest on the hirer and sometimes on the seller according to the degree of control retained by the seller over the vehicle. It is thus clear that there are many obstacles to the successful conduct of a suit for injury in a civil court, which would not be present if compulsory insurance were in force.

53. The above account covers only part of the ground, but the figures indicate that only a small portion of the claims come to court, and that success there is problematical. The majority of successful cases relate to fairly substantial sums, and the delays, expense and uncertainty of the law, as several witnesses have asserted, no doubt deter a large number of poor and ignorant claimants from seeking to establish their rights in a civil court. Although adjudication by the civil courts is inevitable in a number of cases, it is probable that competition among insurance companies will lead to more satisfactory results, if compulsory insurance is introduced.

54. In England at the time of the introduction of the Road Traffic Act, 1930, it was estimated that more than 90 per

Proportion of motor vehicles at present insured. cent. of motor vehicles on the road were already insured. The introduction of compulsion under

the provisions of that Act, therefore, did not

affect materially the operation of so large a proportion as in India. An accurate estimate cannot be framed for India, but the Calcutta Accident Insurance Association, popularly known as the Tariff Combine, gives the following figures for 1935:—

	Number Insured against third party risks.	Number insured against passenger risks.
Private cars	23,303	..
Taxis, buses and lorries	5,478	439

These figures relate to all but a small percentage of the vehicles in the books of members of the combine, but do not of course include figures of other companies not in the combine. Probably they represent

at least 90 per cent. of the vehicles in India. Owing to differences in classification between classes in the provincial figures and the incompleteness of figures supplied, it is not possible to give accurate figures of vehicles in British India, but there were not more than 90,000 private cars and motor cycles and 40,000 taxis, buses and lorries in use at that time. It may be estimated therefore that $\frac{1}{4}$ to $\frac{1}{3}$ of private cars and $\frac{1}{6}$ of public vehicles are insured. So far as public vehicles are concerned this is borne out by the evidence of the Manager of the General Motors Acceptance Corporation, Bombay, who considers that 10 to 20 per cent. of passenger vehicles running on the road at any one time are being purchased on the hire-purchase system. Normally such vehicles are insured as long as the contract is in force, though the insurance is not continued after it has expired, but there is a tendency in certain areas owing to competition among sellers not to insist on insurance. In the case of hire-purchase contracts the policy usually includes third party risks. The proportion of vehicles insured against passenger risks is very much smaller. The smallness of the proportion of vehicles in India at present insured against second and third party risks magnifies the effect on the motor industry of the introduction of compulsory insurance, but is in our opinion a strong argument in favour of adopting this course.

CHAPTER VI.

OPINIONS FOR AND AGAINST COMPULSORY INSURANCE.

55. The Governments of Bengal, Madras, Bombay, the Central Provinces, Sind, Orissa, Assam, Coorg and the Delhi Province are in favour of the introduction of compulsory insurance, while those of the Punjab, the United Provinces, Bihar, the North-West Frontier Province and Baluchistan are against it. The opinions of those Governments who favour the measure are based on the large number of accidents in India, the difficulty in obtaining compensation where legally due, and the undesirability of public vehicles using public thoroughfares if they are not financially in a position to discharge their legal liabilities. The Punjab Government bases its opposition on the following grounds:—

- (i) That in order to secure a hypothetical gain to railways it would put a very large sum into the pockets of insurance companies.
- (ii) It would encroach on one of the few sources of expanding taxation which the province possesses.
- (iii) There is no reason to believe that compulsory insurance would reduce the number of accidents.
- (iv) There is reason to doubt whether the ordinary villager would in practice obtain the compensation due without recourse to litigation.
- (v) The objections to insurance of private vehicles are less strong, but many of them perhaps as many as 50 per cent. are already insured.

56. There is nothing in our terms of reference to suggest that our object is to secure a hypothetical advantage to railways, and it will be clear from our report that this is not one of the considerations on which our recommendations are based. Moreover, there is reason to believe that the level of bus fares on routes competing with railways is determined by competition between buses themselves and is generally substantially lower than that of the railway, and, even if it is raised sufficiently to cover the cost of compulsory insurance, there will still remain a difference in favour of the bus fares. We find it difficult to reconcile the view of the Punjab Government that large sums will be put into the pockets of insurance companies with their subsequent observation in answer to question 20, that it is possible that insurance companies may find it necessary to raise their premia to meet the extra cost of compulsory insurance. We agree that the cost of insurance like any other item in the cost of running a motor vehicle encroaches to that extent on its taxable capacity. We also agree that compulsory insurance will not by itself reduce the number of accidents, though we do not attach much weight to the suggestion that the existence of compulsory insurance will make the driver more careless. It must be remembered that we do not propose that first party insurance, or that of property, should be made compulsory. There will, therefore, still remain a substantial inducement to drivers to drive carefully. We recommend, moreover, in this report that steps should at the same time be taken to make motor traffic less dangerous, and, if our suggestions are adopted, an improvement may in due course be expected. The business of motor insurance in India is highly competitive, and companies will be forced by competition to treat genuine claims in a reasonable manner. Many witnesses have stated that the ignorance of the rural populace, and

the difficulty of enforcing claims in the civil courts are among the principal reasons why compensation is paid so rarely at present. There can be little doubt that the existence of compulsory insurance will become rapidly known, and genuine claims will be met with much greater frequency. Finally, as we have shown in paragraph 54 of the report, the estimate by the Punjab Government of the proportion of private cars which are insured appears to be considerably too high.

57. We have already dealt with many of the arguments of the United Provinces Government in our preceding observations. As regards the further points raised, we agree that the number of motor vehicles is much smaller in India than in England where compulsory insurance was introduced in 1930, not in 1934 as stated by the United Provinces Government. The proportion of accidents to vehicles, however, is very much higher than in England or in any other country in the world for which statistics are available. The low incidence in the United Provinces compared to adjoining provinces is probably in part due to the incompleteness of the statistics which are admittedly unreliable. We agree that other forms of traffic are also responsible for accidents, but motor transport is responsible for a much larger number, and requires special treatment owing to the fact that motor vehicles travel at high speed over public thoroughfares. We do not agree that it is premature to introduce a change because the industry is in its infancy. On the contrary, we believe that it causes less hardship to introduce administrative changes before the evils which it is sought to eradicate and the vested interests that are growing up have taken root too deeply. The Bihar Government lays stress on the absence of a popular demand for insurance, and the fact that there is insufficient evidence that victims who deserve compensation are unable to obtain it owing to the inability of owners of vehicles to pay claims. We do not agree that there is no popular demand, though it is undoubtedly true that owing to the ignorance of the rural population it is not very vocal. We believe that the evidence which we have collected establishes that many owners are in fact unable to pay claims.

58. Insurance companies, the Motor Industry, the Motor Transport. Non-official opinion. Industry, and members of the general public have all contributed their evidence.

59. The Calcutta Accident Insurance Association has tendered evidence on behalf of the main body of Insurance Companies. Insurance Companies. operating in India. The Association does not favour compulsory insurance, as it fears that claims will increase and awards by civil courts become unduly inflated. It also suggests that drivers may become less careful—a point which we have already considered. The Association, however, is prepared to co-operate in providing the necessary cover, if Government will take steps to prevent accidents and control the industry, on which matter we are in agreement with the Association. Although the principal insurers in India are not in favour of compulsory insurance, it is clear from their evidence that they will not place obstacles in the way of its operation.

60. We have received representations from a number of associations and The Motor Industry. individuals interested in the supply of motor vehicles to the public. With the single exception of the Punjab Motor Dealers' Association, who consider the expense prohibitive, this branch of the Motor Industry, appears to be unanimous in advocating compulsory insurance, though at the same time they represent the case

for the reduction of taxation of motor vehicles. We lay considerable stress on the opinion of the sales industry which appears to attach greater importance to the proper development of the industry than to the possibility of a certain number of vehicles being unable to continue in operation.

61. Individuals or bodies representing the interests of owners of one or perhaps two public vehicles are generally opposed to compulsory insurance on the ground of expense, but exceptions are to be found in the Bengal Bus Owners Drivers Association, Calcutta, the Motor Owners Drivers Association, Jubbulpore, in the Central Provinces, and the Belgaum District Motor Association in Bombay; while the Gokhale Institute, which has studied the question in the Southern Maratha country, report that a minority of the better class individuals in this line of business realise the desirability, but fear the cost, of compulsory insurance. Opinion among individuals or companies running regular services is about evenly divided. On the whole, opposition from this section of the industry is less than might have been anticipated.

62. The motoring public as represented by automobile associations, with the exception of the United Provinces Association, which considers such a measure to be premature, is strongly in favour of compulsory insurance. Four Chambers of Commerce, *viz.*, the Upper India Chamber of Commerce, Cawnpore, the Bombay Chamber of Commerce, the Indian Merchants Chamber, Bombay, and the South Indian Chamber of Commerce, Madras, and the Karachi Indian Merchants' Association and the Buyers and Shippers Chamber, Karachi, favour compulsory insurance, while the Indian Chamber of Commerce, Calcutta, is the only body of this class that is opposed to it. Safety-first and allied associations are strongly in favour and so also are the majority of the few members of the general public who tendered evidence. Apart from a section of the transport trade, non-official opinion is overwhelmingly in favour of compulsory insurance.

CHAPTER VII.

THE COST OF INSURANCE AND ITS EFFECTS.

63. The policy at present issued for the voluntary insurance of private cars is generally a comprehensive policy which provides complete indemnity to the assured for any legal liability he may incur in respect of—

- (a) accidental bodily injury, including loss of life, to any person other than a person in the service of, or a member of the household of, the insured, or a person driving the assured car,
- (b) accidental damage to property, other than property actually belonging to the assured or held in trust by him, or property of any relative or friend driving the car.
- (c) law costs and expenses incurred with the written consent of the company.

The indemnification also extends to cover—

- (a) any duly licensed relative or friend of the assured while driving the insured car with the assured's general knowledge or consent,
- (b) the assured whilst driving a car (used solely for private or professional purposes) not belonging to him, provided that the car described in the schedule of the policy is not in use at the time.

In addition, the following risks are also covered:—

- (a) Damage (excluding that due to mechanical breakdown, wear and tear, depreciation, etc.), caused by accidental external means such as a collision with some other body, or malicious acts.
- (b) Loss of or damage to the car and/or its accessories by fire, lightning, theft, etc., or in transit by rail, road, or inland waterway.
- (c) Medical expenses up to a specified limit incurred by the assured owing to injury arising out of an accident.

Some companies, as an extra attraction to insure with them, offer in addition to pay, up to certain limits, compensation in the event of death of or injury to the assured person or his wife. Usually, however, it is customary for this extra benefit to be covered by payment of an extra premium. It is, however, laid down in the policy that the insurer will not be liable if—

- (a) the car is let on hire or used for any other purpose than that specified in the schedule;
- (b) it is driven by an unlicensed driver or one whose licence is not in force or who is under the influence of intoxicating liquor;
- (c) it is engaged in racing, wagering, or pace-making;
- (d) it is driven in an unsafe or damaged condition either before or after an accident; and
- (e) the statements and answers in the proposal form are untrue.

64. Premium rates for such a policy vary according to the value of the car and its horse power. As a general rule the increase in premium is Rs. 10/- for every Rs. 1,500/- of value over and above the first Rs. 1,500. For example, if there are two 20 horse power cars, one valued at Rs. 3,000 and the other at Rs. 6,000/- the premium quoted for the first will be Rs. 185/- and for the second Rs. 205/-. As regards horse power, the rule is, the higher the horse power, the higher the premium. The increase is roughly Rs. 5/- per horse power unit up to 17, and somewhat less thereafter. For example, the premium quoted on a car valued at Rs. 4,500/- would be Rs. 155/-, 180/- or 200/- according to whether its horse power is 10, 15 or 24.

65. These rates are quoted by members of the Accident Insurance Association for insurance of private cars in Calcutta and Northern India. If there are any variations in other parts of the country they are, we believe, only slight, but an owner known to be a bad risk will, of course, be charged an increased premium.

66. Various rebates are offered in the shape of percentage deductions for no claims, insurance of two or more cars, the assured bearing a proportion of all claims, etc. Membership of an automobile association is frequently a further qualification for a rebate.

It will be noticed that we have referred to "quoted" rates. We have been informed, and we believe it to be true, that in order to secure business high rates of commission are offered to agents who in turn, realising that a small profit is better than none at all, pass a considerable portion of their commission on to owners effecting the insurance. We do not regard this position as at all satisfactory. We note that in the Indian Insurance Bill now referred to a Select Committee, it is proposed to limit agents' commission to 25 per cent. We would go a step further and recommend that the limit be fixed for motor insurance at 10 per cent.; for, if third party insurance is to be made compulsory, the task of the agent will not be to convince an owner that insurance is necessary, but merely to induce him to effect insurance with a particular firm. A statutory limitation of commission will, we trust, result in a modification of the present scale, which, if what we are told is true, in practice rarely remains in force.

67. We understand that policies to cover third party risks only can be obtained at 50 per cent. of the ordinary premium rates, so that the annual cost of compulsory insurance to the private owner of moderate means in possession of an average car would, even according to present quotations, be not more than Rs. 80/- or Rs. 90/-. With the aid of the various rebates and a limitation of commission as suggested by us, to a careful owner it should be far less. It represents no more than a fractional increase in his operating costs and should not affect his capacity for taxation.

68. The terms of the policy at present generally issued in respect of the Commercial Vehicles. Various classes of commercial vehicles do not differ to any great extent from those in policies issued in respect of private cars except that it is customary to limit third party liability to Rs. 15,000. Premium rates, however, vary. For instance they are lower for vehicles garaged in the islands of Bombay and Salsette and Karachi (i.e., urban areas) than they are for vehicles garaged elsewhere in Sind, the rest of the Bombay Presidency, Central India, Hyderabad (Deccan), Rajputana and the Central Provinces. Rates for

Bengal and Northern India are higher again, due, we understand, to risks being greater. This area or district rating scheme is also known in Great Britain, but the converse applies, in that certain densely populated or highly industrialised areas are looked on as greater risks than country districts. Rebates are admissible under certain circumstances, although not to the same extent as in the case of private vehicles. The following are the tariff rates prevailing in the area quoted above under the Bombay Accident Insurance Association:—

A.—Goods Vehicles of the Delivery Van Type.

If garaged in Bombay, Salsette or Karachi: Rs. $145 + \frac{1}{2}$ per cent. on insured value.

If garaged outside Bombay, Salsette or Karachi: Rs. $170 + \frac{1}{2}$ per cent. on insured value.

This class, includes generally speaking all light goods vehicles with a carrying capacity not exceeding one ton.

B.—Light Goods Vehicles, i.e., those with a carrying capacity not exceeding two tons.

If garaged in Bombay, Salsette or Karachi: Rs. $165 + \frac{1}{2}$ per cent. on insured value.

If garaged outside Bombay, Salsette or Karachi: Rs. $200 + \frac{1}{2}$ per cent. on insured value.

C.—Heavy Goods Vehicles, i.e., those with a carrying capacity exceeding two tons.

If garaged in Bombay, Salsette or Karachi: Rs. $200 + \frac{1}{2}$ per cent. on insured value.

If garaged outside Bombay, Salsette or Karachi: Rs. $250 + \frac{1}{2}$ per cent. on insured value.

In the first two classes the rates quoted are dependent on the condition "Warranted not to haul any trailer". In the absence of any such warranty an extra premium of Rs. 25/- to Rs. 35/- is charged. Trailers can be insured for Rs. $25 + \frac{1}{2}$ per cent. on insured value. The limit of liability can be extended to Rs. 30,000/-, Rs. 50,000/- or unlimited on payment of an extra Rs. 10, 15, or 25. For a lorry with a carrying capacity of about two tons, valued at Rs. 4,000/- the premium for the comprehensive policy would be therefore Rs. $165 + 20$, i.e., Rs. 185/- or Rs. $200 + 20$, i.e., Rs. 220/- according to the area in which it is garaged. We understand that the cost of third party liability alone would be 40 per cent. of this rate, i.e., Rs. 75 or Rs. 88, if cover up to Rs. 15,000 was required. For a larger vehicle, the cost would be Rs. 88/- or Rs. 108/-.

D.—Passenger carrying vehicles.

If garaged in Bombay, Salsette or Karachi:—

(a) Seating capacity of 16 and under: Rs. $200 + \frac{1}{2}$ per cent. on insured value.

(b) Seating capacity of over 16: Rs. $225 + \frac{1}{2}$ per cent. on insured value.

If garaged outside Bombay, Salsette or Karachi: Rs. $225 + \frac{1}{2}$ per cent. on insured value.

These rates are for single deck vehicles. For double deckers, the rate is Rs. $400 + 1$ per cent on insured value.

The rates for Bengal and Northern India are rather different and vary according to seating capacity and weight of vehicle. For a vehicle seating 18 to 24 persons, the rate is Rs. $250 + \frac{1}{2}$ per cent. on insured value, *i.e.*, Rs. 25 more than the Bombay rate.

There is one important condition for this class of vehicle, *viz.*, that the assured must bear the first Rs. 100 of every claim himself, but the insurer will accept the first Rs. 100 of third party liability only on payment of an extra premium of Rs. 10. For fare carrying vehicles of the private car type, the premium is Rs. $200 + \frac{1}{2}$ per cent. on insured value. Increased liability can be covered by paying the same extra premia as in the case of goods vehicles. Third party risks only may be insured at 40 per cent. of the above rates. Risks to passengers are, however, not included in the above. Indemnity against an assured owner's legal liability only in respect of passengers has been granted at the following rates:—

Per passenger on total Passenger Carrying Capacity

Rs. 1,500 any one passenger	Rs. 3,000 any one passenger	Rs. 5,000 any one passenger	Rs. 7,500 any one passenger	Rs. 10,000 any one passenger	Rs. 15,000 any one passenger	Rs. 20,000 any one passenger
Rs. 6,000 any one accident	Rs. 12,000 any one accident	Rs. 20,000 any one accident	Rs. 30,000 any one accident	Rs. 50,000 any one accident	Rs. 75,000 any one accident	Rs. 1,00,000 any one accident
Rs. 3	Rs. 4	Rs. 5	Rs. 7	Rs. 10	Rs. 12	Rs. 15

A 20 passenger bus valued at Rs. 4,000 in Central and Western India would, therefore, have to pay the following for—

(a) Third party insurance limited to a liability of Rs. 15,000	40 per cent. of Rs. 236.4 = Rs. 94.8
(b) Passenger insurance with risks limited to Rs. 5,000 per passenger, and Rs. 20,000 in any one accident	$20 \times 5 = \text{Rs. } 100.0$
	<u>Total = Rs. 194.8</u>

69. We have given in the foregoing some idea of the cost of compulsory third party insurance for commercial vehicles at present rates, and of the additional passenger insurance in the case of motor buses. As regards goods vehicles the effect will be to increase operating costs by about four or five annas a day. We do not consider this an undue burden or one which cannot be passed on to the consumer, representing as it does an increase in cost of goods transport of about two annas per ton per day. Considering the liability of goods vehicles to accidents as has been shown by the experience of Bombay and Karachi, we think that the imposition of this extra burden is justifiable and reasonable at the price. It calls for no reduction in existing rates of taxation. The cumulative third party and passenger premium for passenger vehicles, *i.e.*, motor buses is, however, much higher, but its effect on passenger fares will be almost negligible. It is very doubtful whether the vast majority of bus owners know what their actual operating costs are, unless they have combined into efficient organisations or associations. The Managing Director of the City Motor Service, Limited, Madras, which appears to be a flourishing concern, estimated that in a working year of 320 days, at 120 miles per day, his operating costs worked out at 3 annas 2.7 pies per mile, excluding

insurance. His own concern ran 22 buses, all of which were insured, and according to the profit and loss account (of which he gave us a copy) for the half year ending 30th September 1936, made a profit of over Rs. 10,000. Mr. Mani of the South Indian Chamber of Bus Owners, also of Madras, furnished us with figures to prove that their operating costs on one route were 4·6 annas a mile, and their returns were 5·1 annas. On another route costs were 3·8 annas. Estimates of the mileage covered by buses in the mofussil were equally varied. At a very conservative estimate, however, it can be said that the average bus covers about 20,000 miles a year. If we take the costs of compulsory insurance at Rs. 200, this works out at Re. 1 per 100 miles, or in other words an increase in passenger fares of one anna over the same distance. This can be no burden on the owner or the passenger, nor can it affect the former's capacity to pay ordinary provincial taxation. We have quoted cases from Madras where taxation is much higher than in any other province, to show how services can be run at a profit, but success in doing so has depended on organisation, co-operation and efficient management. We would, however, refer to mofussil services operating inter-provincially; the payment of full taxation in each province is a serious burden, and we would stress the importance of local Governments coming to some agreement for modified taxation in each province in order not to hamper the development of rural transport.

70. We close this chapter by referring briefly to a possible accusation that we have not enquired into the equity or otherwise of the rates of insurance furnished to us. Through question 36 of our questionnaire, we tried to ascertain the numbers of third party claims made and paid during the last four years. The insurance representatives whom we examined told us that this information was not obtainable, but assured us that very large third party claims were paid, and that, not infrequently, they compensated injured parties to a considerable extent than incur the heavier cost of litigation. In question 37 we asked for information as to the total amounts of premia paid, and claims settled, and costs of commission and management during the same period. We were told that insurers were not in possession of any statistics which had any bearing on the cost of compulsory insurance, and the witnesses indicated that this was due to the fact that all accident business is combined under one head of account. We were informed, however, that insurers did not anticipate any immediate alteration in rates but the ultimate cost of insurance would depend on the experience gained from the proposed legislation.

We have further been informed by the Calcutta Accident Insurance Association in the following terms:—

“On the assumption that under the new legislation effective control will be exercised in relation to overcrowding of vehicles my Committee would be willing to suggest to the Insurers whom they represent, a rate of Rs. 3 per passenger for cover limited to Rs. 1,500 per passenger without any limit per accident; for a limit of Rs. 3,000 the rate would be Rs. 4 per passenger. This premium would be charged on a maximum licensed carrying capacity of the vehicle and if this were to include standing passengers the premium would be calculated on the total number of seats *plus* the authorised number of standing passengers. My Committee wish to make it clear that their suggestions are based on the understanding that the liability

of insurers per accident will in all cases be limited to the maximum per passenger multiplied by the maximum licensed carrying capacity of the vehicle."

This we regard as a very generous concession indeed, and we commend the genuine spirit of co-operation of the Association which has made it.

71. We are not in favour of any State control of premium rates, as we feel sure that if revenue accounts of compulsory insurance are returned in Form F of the Third Schedule of the new Indian Insurance Bill, there will be sufficient indication as to whether policy-holders are being given a fair deal. We can only express a hope that should insurers find it necessary at any time to increase premium rates, they will take the public into their confidence and furnish reasons for any such increases. We do not think for one moment that rates will remain as they are at present. It is more than probable that they are based on insufficient data acquired from a limited experience of voluntary insurance. Compulsory insurance, we feel, will result in the acquisition of very much clearer data which will necessitate a readjustment of premium rates, though not necessarily for the worse.

CHAPTER VIII.

AREAS UNDER COMPULSORY INSURANCE.

72. Compulsory insurance is in force in parts of Bombay and Sind, discretion being given to the District Superintendent of Police to enforce on it except in the case of heavy motor vehicles. It has therefore been in force in these areas for varying and intermittent periods. The rates are somewhat below those which we are suggesting. Our enquiries have not revealed anything to show that it is unworkable in practice.

CHAPTER IX.

CONCLUSIONS REGARDING COMPULSORY INSURANCE.

73. The volume of road accidents in India due to motor traffic, to which the low standard of care and responsibility exercised by many drivers of motor vehicles has undoubtedly contributed, and the extreme difficulty experienced by the injured party or his legal representatives in obtaining compensation, make out a very strong case for compulsory insurance. The great preponderance of opinion, both official and non-official, is in favour of this course; and in agreement with that opinion we have no hesitation in making a recommendation in favour of compulsion.

74. We now proceed to examine the class of vehicle that should be insured, and the amounts for which we think insurance should be made compulsory. While public service vehicles are undoubtedly responsible for an unduly large proportion of accidents, yet private vehicles have by no means a good record in this respect. We therefore recommend that subject to the exceptions specified elsewhere in the Report, insurance should be made compulsory for all motor vehicles, including motor cycles, that use the roads of British India. Opinion is practically unanimous that, if insurance is made compulsory, it should extend to third party risks to the person, but there is some opposition, on the ground of expense, to the inclusion of second party risks, that is, risks to passengers in public vehicles. We are unable to make any logical distinction between a passenger and a third party, and recommend that insurance against second and third party risks should be made compulsory. We have also considered whether the insurance of drivers and attendants should be made compulsory. They fall within the scope of the Workmen's Compensation Act since July 1934. The experience of the working of this Act in Bombay suggests that there may be some difficulty in obtaining compensation even after an award has been made. But the number of cases is small, and in most cases, if a man can afford to maintain a driver, he can pay compensation. We are anxious to keep the cost of compulsory insurance for public vehicles as low as possible, and recommend that the insurance of drivers and attendants should not be made compulsory. We do not consider that the time has yet come for making insurance of damage to property compulsory.

75. There is some difference of opinion regarding the amount for which insurance should be made compulsory. The note to question 16 of our questionnaire is misleading in that the sums specified in it are minima required in the case of a guarantee to take the place of insurance; and in England there is no limit to the amount for which insurance is compulsory. We consider that the following amounts, while affording adequate protection to second and third parties, will not place an unduly heavy burden on the road transport industry:—

	Rs.
Private cars	Unlimited
Goods Lorries	30,000
Buses { Second parties (fare paying passengers)	3,000
Third parties	per seat
Second parties (fare paying passengers)	30,000
Other hired vehicles (including taxis)	per seat
Third parties	30,000

NOTE.—Cars, which are hired under conditions in which the hirer undertakes the liabilities of the owner are included in private cars.

76. We further recommend that in the case of second and third party claims the full liability should be borne by the insurer, and no portion of the claim, *e.g.*, the first Rs. 100, by the assured. Our object is to secure the investigation and payment of claims which, though in themselves small in amount, are of importance to persons with low earning capacity.

77. Under these proposals the approximate gross cost at present rates will be—

		Rs.
Goods lorries	.	90—120
Buses	{ Third party	90—120
	{ Passengers	4 per seat.
Other hired vehicles (including taxis).	{ Third party	80—100
	{ Passengers	5 per seat.

CHAPTER X.

STATE INSURANCE.

78. It has been suggested to us by several witnesses that Government should undertake the duty of motor insurance. No other Government in the world has undertaken this business and it is clear that the objections to it are overwhelming. The volume of business would be insufficient to justify local Governments engaging the necessary technical staff; moreover, difficulties would arise if some local Governments entered the market while others did not. Any such scheme in our opinion would have to be Central. Advocates of the scheme believe that the cost of motor insurance would be decreased owing to the elimination of commission and overhead charges. It is clear that overhead charges would not disappear as the cost of the technical staff would remain; the agency for the investigation of claims would have to be the local staff of the Provincial Governments who might not always be jealous of the rights of the Central Government; further, although we have no material before us on which to base an estimate of cost, we point out that one factor which at present tends to keep down overhead charges, *viz.*, their division between a number of different forms of insurance, would disappear. The creation of a State monopoly, which would drive existing interests out of the market, is also open to objection on this account. But the main objection, in our opinion, to the proposal is that it would put the State in the position of having to adjudicate on claims against itself.

CHAPTER XI.*

SAFEGUARDS FOR THIRD PARTIES.

79. Second and third parties, in whose interests compulsory insurance is proposed, are in a peculiar position in that they are not parties to the contract by which they are protected. Much time and thought has been devoted in England to secure that they are not deprived of their protection owing to flaws in the contract of insurance, and a committee under the chairmanship of Sir Felix Cassel, Bt., K.C., is at present sitting in England reviewing *inter alia* this aspect of the Motor Insurance laws. It is unfortunate that the report of this Committee is not yet available. We propose to utilise the experience of more than six years of compulsory motor insurance in England, but it is probable that our recommendations will require modification in the light of the report of the Cassel Committee.

80. The English companies which have given evidence before that Committee have laid great stress on the desirability of maintaining the doctrine of *uberrima fides* in relation to Insurance Law. This doctrine has been recognised in section 10(3) of the Road Traffic Act 1934 which allows the insurer to escape liability on the ground of non-disclosure or misrepresentation, if, in an action commenced before or within three months after the commencement of proceedings in which the judgment was given, he obtains a declaration to that effect. This throws the onus of proving non-disclosure or misrepresentation on the insurer, and in practice will lessen the number of cases in which the claim fails on those grounds. This same section gives the right to injured parties to proceed direct against the insurer when a decree has been passed against the assured. This right is clearly of great value in the event of the insured absconding or having no property which can be attached by the Court passing the decree. If the insurer claims that the contract is void by reason of fraud or misrepresentation, he must proceed in the manner indicated above. We recommend that, subject to certain safeguards to the insurer contained in section 10(2) and 10(3) of the Road Traffic Act 1934, similar provisions should be incorporated in the law of India.

81. We have also examined the effect of section 78 (1) (d) of the Irish Road Traffic Act 1933 which gives the injured party the right to sue the insurance company direct if the court so permits. This is an alternative method of giving the injured party the protection of section 10 of the 1934 Road Act, and it is not in our opinion necessary to provide two methods of attaining the same objective. The Road Traffic Acts of 1930 and 1934, further, nullify a number of conditions—where they appear in insurance policies—so far as claims for damages to second and third parties are concerned. Section 38 of the 1930 Act renders of no effect any condition in a policy making it void in the event of the assured failing to do some future act such as giving notice of the accident. This principle is extended by section 12 of the 1934 Act, and conditions in policies of insurance in regard to the following matters are made void:—

- (a) Age, physical or mental condition of the driver.
- (b) Condition of the vehicle.
- (c) Number of persons carried.

*Relevant extracts of the Acts quoted in this Chapter are reproduced in Appendix 2: (pages 63—71).

- (d) The weight or physical characteristic of the goods carried.
- (e) The time or areas within which the vehicle is used.
- (f) The horse power or value of the vehicle.
- (g) The carrying on the vehicle of any particular apparatus, or any particular means of identification.

It is possible that the English Law will now be modified by enumerating the conditions which may be included in an insurance policy instead of those which are void if they are included. We recommend that the English Law should be followed in this respect.

82. The question of unauthorised use of the vehicle is not free from difficulty. Two classes of cases may occur; in the first the use of the car may be entirely unauthorised, *e.g.*, in the case of theft, and secondly the car may be used with the permission of the owner under circumstances which are not covered by insurance, *e.g.*, the policy may be limited to cases in which a particular person drives, and the owner may permit somebody else to drive. Some doubt exists as to the interpretation of the English law in its present form. But it is a matter in which the experience gained in England is very valuable. We recommend that no restriction should be at present placed on insurance policies in this respect, but that the matter should be reconsidered after the Cassel Committee has reported.

83. Section 36(4) of the Road Traffic Act 1930 provides that authorised users specified in the insurance policy should be indemnified by the insurer; that is to say, in the event of an accident for which an authorised user is responsible, he may claim direct from the insurer without making the assured an intermediary. We recommend that this provision of the law in England should be adopted in India.

84. The Third Parties (Rights Against Insurers) Act, 1930, materially affects in England the rights of second and third parties by enacting that upon the insolvency of the assured his rights against his insurers are transferred to and vest in the second and third party. Section 1(3) and Section 2(1) of the same Act provide that any condition in the policy purporting, whether directly or indirectly, to avoid the policy or alter the rights of the parties under the policy in the event of the assured's insolvency, or to preclude third parties from obtaining information as to the existence of the policy is void. Section 1(4) also provides that no settlement of claim between the insurers and the assured can defeat the claims of second and third parties. Section 11 of the Road Traffic Act, 1934, gives further protection in the event of the insolvency of the assured by permitting the injured party to proceed against the insurer direct. Section 13 of the same Act makes disclosure of the existence of insurance, and particulars of the policy contained in the certificate of insurance compulsory. This is necessary to enable the injured party to approach the insurer direct. We recommend that these provisions protecting the rights of second and third parties should be incorporated in the law of India.

85. The Law Reform (Miscellaneous Provisions) Act 1934, section 1(1), provides that subject to certain conditions and exceptions all causes of action shall survive against or as may be for the benefit of the estate of a deceased person. The same object is secured in India by section 1 of Act

CHAPTER XII.

ALTERNATIVES TO INSURANCE.*

Section 35(4) of the Road Traffic Act, 1930 exempts any person who has deposited £15,000 with the Accountant General of the Supreme Court from the obligation of compulsory insurance, and section 43 gives injured parties preferential claims against this sum. These provisions enable large corporations to carry their own insurance. We recommend the adoption of similar provisions in India, the amount of deposit being 1 lakh in order to conform to the deposit demanded from insurance companies. The State is in a position to carry its own insurance and we cannot question its ability to meet its obligations, nor is there any need for it to make a deposit with itself. It should be exempted from the liability to insure its own vehicles. Section 35 and section 37 of the English Road Traffic Act 1930 provide that a guarantee of security given by an authorised insurer or other body of persons carrying on that class of business may be substituted for compulsory insurance. We understand that little use is made of these provisions in England, and we do not think it is necessary to find a place for them in the Indian law.

*Relevant extracts of the Acts quoted in this Chapter are reproduced in Appendix 2 (pages 63—71).

CHAPTER XIII.

CO-OPERATIVE INSURANCE.

87. We have considered with great interest the evidence of the Ratnagiri District Co-operative Motor Owners Association, Limited. This Association operates in the Ratnagiri District of the Bombay Presidency and has a membership of 116 persons owning 194 vehicles. The area is one in which insurance is compulsory at present. The Association owns an insurance fund of Rs. 52,537 at present, and has paid claims amounting to Rs. 1,457 in 12 cases from 1933—1936. The fund has been built up by instalments, each owner subscribing Rs. 400 per one ton car, and Rs. 265 per half ton car, after which payments cease although the liability remains to pay up to Rs. 30 per annum by instalments of Rs. 10 if it is necessary to obtain additional funds. The investment of funds requires the sanction of the Registrar, Co-operative Credit. The District Magistrate and Superintendent of Police are associated with the Committee which adjudicates on claims.

88. It is clearly desirable to encourage associations of this kind, as they are able to operate in local areas with much smaller overhead and commission charges than insurance companies, and have a cheaper agency for investigating claims. Moreover the existence of co-operative liability will act as a binding force to keep together associations of public vehicle owners, which will enable the single owner to take his proper place in the development of the industry. This will result in keeping down the cost of transport in areas where such associations operate. If co-operative societies are to take the place of insurance companies, it is obviously necessary that they must offer the same protection to the general public; and it will be necessary for the Ratnagiri and similar societies to alter its constitution to secure this object. In particular we do not consider that one lumpsum payment can take the place of annual premia. The conditions that should be laid down for such societies in our opinion are—

- (1) That there should be a deposit which should not be available for meeting claims or other expenses except in the event of winding up. This deposit should be Rs. 25,000 if the number of vehicles is fifty or below increasing to Rs. 50,000 or Rs. 1,00,000 if the number of vehicles exceeds 50 or 100. But it may be collected in instalments of not less than one third of the total amount in not more than 3 years. The deposit should be subject to the provisions of the new Insurance Act applicable to deposits by insurance companies.
- (2) The risks covered must be the same as those required to be covered by compulsory insurance; and in order to do this it may be necessary to re-insure against large claims.
- (3) The provisions of the law, which are necessary to protect second and third parties in the event of the contract between the insurer and assured being voidable, must apply.
- (4) Some outside authority must be associated with the society in settling claims.
- (5) The society must be registered as a co-operative society and be subject to the control of the Registrar, Co-operative Credit.

Other details may be left to local Governments and their Registrars, but we consider that while there is no objection to members transferring their rights to new members who are qualified to join the society, they should not be able to resign and take away a portion of its assets with them.

We recommend that local Governments should have power to exempt owners of motor vehicles, who are members of a co-operative insurance society, from compulsory insurance subject to the above conditions.

CHAPTER XIV.

CONTROL OVER COMPANIES.

89. The general question of the control over insurance companies is at present before the Legislative Assembly in the form of the Insurance Act, 1937. We are unable to distinguish in principle between motor insurance and other forms of insurance as regards the bodies which may be allowed to operate in India or the degree of Government control that is desirable. We therefore, have no alterations of principle to suggest. We consider, however, that some alterations in the details are desirable, and hope that it is not too late for them to be made.

90. There will be a considerable increase in the volume of motor car insurance, if compulsory insurance is introduced, and we consider that this form of business should be treated separately. Section 5 of the Act should be amended so as to require a separate deposit for Rs. 1,00,000, which figure may be compared with £15,000 required under the English law for motor vehicles insurance. We also consider that the account forms, which are prescribed, should show motor insurance business separately with sub-heads for that part of it which is compulsory and that which is not. We realise that some extra work will be entailed in separating the accounts, but it should be possible either to separate the premia and costs where a composite policy is issued, or to issue separate policies. It is obviously desirable that information should be available to the public regarding a form of insurance that is compulsory.

91. We have received evidence that the commission paid on motor insurance business is high. It appears to be increasing at present owing to competition among the insurance companies, and sometimes as much as 40 per cent. is given. Under section 33 of the Insurance Act, 1937, a maximum of 25 per cent. is laid down. Commission is a fee paid for the introduction of business, and much of the agent's time is occupied in persuading clients to insure. The work of the agent, therefore, will be diminished by the introduction of compulsion; and, as we have already stated, we consider that the commission for this form of motor insurance should be limited by law to 10 per cent. of the premium.

CHAPTER XV.

THIRD PARTIES AND THEIR RIGHTS.

92. Many witnesses have stated before us that, at present, many claims lapse owing to the ignorance of the injured parties. We have little doubt that the introduction of compulsory insurance will in itself make a great change in this respect in a short time, but we feel that some liaison between the injured, the administration and the insurance companies is desirable. We have considered whether some form of organisation analogous to that administering the Workmen's Compensation Act should be created; but accidents will continue over wide areas in comparatively small numbers per district, and any legal powers found necessary would have to be entrusted to a large number of different officers none of whom would have experience of a great many cases. The Commissioner, under the Workmen's Compensation Act, passes awards against which no appeal lies unless the amount exceeds Rs. 300 and a point of law is involved, and in important industrial centres a whole time officer is appointed. In our opinion it would not be desirable to entrust powers of this kind to a large number of officers, thus ousting the jurisdiction of the civil courts. We consider, however, that in the interests both of the insurance companies as a protection against bogus and inflated claims, and of the victims of accidents, copies of police reports in cases of accidents involving injury to the person should be freely available to insurance companies. Those reports should give particulars of the injuries received, and an opinion as regards the cause of the accident. Further we think that it should be left to local Governments, who have to provide the staff, to decide whether any, and if so what, officers should act as a connecting link between injured parties and insurance companies.

CHAPTER XVI.

THE ENFORCEMENT OF COMPULSORY INSURANCE.

93. The simplest method of preventing the evasion of the obligation to insure is to require that no certificate of registration should be issued, unless evidence is produced that the necessary insurance cover has been obtained from an approved company for the whole period for which the registration certificate is valid. Insurance interests object that this will cause a rush of work at particular periods of the year, and prefer that evidence of cover should be given at the time of registration, and that the insurers should give notice to the registration authorities of the dates on which policies lapse. Under either system it is desirable that the insurers should inform the registering authorities when policies are cancelled. When a policy is cancelled the certificate of insurance should be surrendered, and the insurance companies should inform the registering authority that this has been done. Provision will also have to be made for the replacement, under adequate safeguards, of certificates of insurance which have been lost or destroyed. The evidence of insurance should consist of a certificate of insurance which should be carried on the vehicle. Sections 39 and 40 (1) of the English Road Traffic Act, 1930, contain the English law on the subject. These provisions may with advantage be adopted in India. We do not hold decided views as to which system is preferable, nor do we consider that this is a matter in which uniformity of procedure among the various local Governments is necessary. We recommend that local Governments be empowered to make rules to enforce the law in this respect.

CHAPTER XVII.

THE POSITION OF INDIAN STATES.

94. Under section 101 of the Government of India Act, 1935, the powers of the Federal Legislature, after federation comes into force, with regard to Indian States are to be exercised in accordance with the instrument of accession of each individual to the Federation. It is to be hoped that Indian States before and after Federation will adopt the practice of British India, as regards compulsory insurance. If they do not all do so, it is possible that a few vehicles will enter British India by road from areas in which insurance is not compulsory. We consider that all such vehicles should be required to be insured if they enter British India. Experience will doubtless show whether any special administrative measures are necessary to deal with them; but it is possible that the liability to a penalty for the infringement of the law regarding motor vehicles will suffice.

CHAPTER XVIII.

"SAFETY FIRST" MEASURES.

95. The recommendations which we have made regarding compulsory insurance are not, in our opinion, by themselves sufficient to dispose of the matter. The English law regarding motor insurance is not an entity in itself, but is part and parcel of the general scheme for the protection of the public against a danger created by the changing conditions of modern transport. The incidence of accidents per motor vehicle in India appears to be the highest in the world, and we are in complete agreement with the claim of the insurance companies, that, if they are to provide cover for motor vehicles which are compulsorily insured, Government must take steps to minimize the number of accidents. If this is not done there is a fear that the scheme of compulsory insurance will break down owing to the high premia that will be necessary to cover the cost.

96. We have no doubt that the greatest danger to the proper development of the public road transport industry, and incidentally the cause of the increasing toll of accidents, is the "one man, one vehicle" system. Some local Governments have taken and are taking steps to effect a remedy, but much still remains to be done. The statistics that we have collected show that a very large proportion of public vehicles are so owned. Apart from the inability of these single owners to satisfy claims that are made against them the system in itself is the cause of a large number of accidents. We have ourselves observed on popular routes large numbers of vehicles awaiting their turn to take the road. We have been informed that particular individuals often wait 3 or 4 days before their turn arrives. Owing to competition fares are low, while overhead charges are high owing to the infrequency of journeys. It is in consequence difficult to make both ends meet, unless the vehicle is full or overcrowded. Racing thus occurs in order to be the first on the road, and in a dusty country like India the poor visibility when one vehicle passes another inevitably leads to accidents. At the same time the immediate cost of keeping a vehicle in proper condition is often avoided by a hard pressed owner to the detriment of its serviceability; and the enforced idleness of drivers for days together may conduce to habits which lessen their efficiency. We have stressed the evils of the system, because it is condemned by every responsible witness who has appeared before us, including many representatives of the small bus owner. We do not advocate that the small man should be driven off the road, but he should be made to combine into small associations, which run to regular time-tables and maintain services based on the needs of the areas they serve. We have taken evidence from a number of these associations or pools, and, if properly managed, they are able to give adequate service to the public at a low cost, and at the same time to make reasonable profits. They are apt to be short lived, if the route is free to all comers, and outside vehicles come in to take the cream of the traffic, but where limitation is in force can be worked successfully. We recommend that licensing of routes should be enforced everywhere and the number of vehicles reduced either immediately, or if this is not practicable, gradually to that required for a particular locality.

97. It is not perhaps within our province to suggest the machinery for the licensing of routes, and we should be glad to see the result of the experiment of Transportation Boards in the United Provinces before giving a

definite opinion in the matter. The system of licensing of routes is, however, liable to abuse as in Calcutta and possibly elsewhere, where there is reason to believe that the right to a route is sold for substantial sums together with the vehicle as part of the hire purchase contract. We incline to the view that the licensing of a route is not an integral part of the duties of the police as controllers of traffic, and that this function, as in England, should be placed in the hands of Transportation Boards. The decision in the matter under the new Constitution rests with local Governments, who must be empowered by rule to take the necessary steps.

98. Our observations regarding public vehicles and the licensing of routes do not apply to taxis. There are so far as we know no administrative reasons why these vehicles should not be in the hands of individuals, and their record of accidents compares favourably with that of other classes of commercial motor vehicles in India. We have received complaints, which appear well founded, that private vehicles in certain places engage in the business of taxis. There is no evidence, however, that this is a contributory cause towards accidents. The object of the private car in such cases is to avoid taxation. We anticipate that the necessity for insuring these vehicles under their true colours will strengthen the hands of the authorities in dealing with them.

99. We have also received evidence that overloading of public vehicles, both passenger and goods, is common. We ourselves observed, at a place in Sind, a bus full inside, with a heavy load of luggage on the roof and a further complement of passengers on top. Goods vehicles are frequently loaded beyond the maker's specifications with a dangerous strain on their machinery particularly the brakes. We were informed in Bombay, that accidents had been caused by such vehicles bringing down the ghat loads which were in excess of the limit of safety. In Karachi town the statistics show that on an average every goods lorry plying in the town has an accident involving injury to the person once every 15 months. From the Punjab it is reported that goods vehicles running at night with no identification plates have been known to charge through the police attempting to stop them. Tighter control over overloading may necessitate the employment of more staff, and must be left to the discretion of local Governments, who have many other calls on their purse; but we bring to their notice the necessity for more effective control.

100. Most local Governments appear to have made adequate arrangement for the inspection of public motor vehicles at the more important centres, but at places where traffic is small funds are not always available for the employment of technical staff. We have been informed of cases in which vehicles have failed to pass the test at one place, and have then been successful elsewhere. The quarterly inspection of the mechanical condition of public vehicles is required in some provinces, while in others annual inspection is considered sufficient. We consider that more use might be made of qualified travelling inspectors for the less busy centres. We also think that inspections should be required at not greater intervals than six months.

101. There is little check over the mechanical condition of private vehicles, but we have no reason to believe that this is one of the principal causes of accidents; it is possible that it will be necessary to tighten up control in this respect in due course; but at present we consider that any funds available could with greater advantage be spent on the control of public vehicles.

102. Opinion is fairly unanimous that the standard of skill in driving both public and private vehicles is adequate. Accidents are due not so much to lack of skill, as lack of road sense and irresponsible driving. We consider that the magistracy should make greater use of the power to proceed against negligent drivers, and we think that following the precedent of section 6 of the English Road Traffic Act 1930, section 18 of the Indian Motor Vehicles Act, 1914, should be re-drafted so as to place the onus on the Court of using more frequently their powers to suspend or cancel driving licences.

103. The figures for prosecutions for offences relating to rash or negligent driving indicate that approximately thirty per cent. result in acquittals. These figures include cases under sections 337 and 338 of the Indian Penal Code in which composition of the offence is allowed. In such cases the offender is not only guilty of an offence against the person, but he is a potential source of danger to the public. In cases of this nature an offence must have been committed under section 279 of the Indian Penal Code, which is not compoundable; we understand that in some cases where the parties have agreed to compound, this is permitted with regard to the sections of the law under which composition is legal, and no further action is taken under section 279. This practice appears to us to be of doubtful legality and should cease.

CHAPTER XIX.

THE VENUE OF LEGISLATION.

104. "Insurance" is included in List I and "Mechanically propelled vehicles" in Part I of List III of the Government of India Act, 1935, that is to say that "Insurance" is a Federal subject and "Mechanically propelled vehicles" a subject in which there is concurrent jurisdiction between the Federal and Provincial Governments. Our proposals regarding motor insurance companies fall under the head "Insurance" and we have already suggested certain amendments to the Insurance Act now before the Central Assembly. We are of opinion that it is necessary, in the interests of uniformity, that the Central Legislature should deal with our main proposals, that is to say, the question of making motor insurance compulsory, the subsidiary legislation necessary for the protection of second and third parties, the class of vehicle to be insured and the amounts for which insurance should be made compulsory, while other matters, such as those which deal with the measures to be adopted for the control of motor traffic and the prevention of accidents, should be left to local administrations which have to defray the cost. This can appropriately be done following the precedent of the English Road Acts by amending the Indian Motor Vehicles Act, 1914, or by substituting a new act for it giving power by rules to local Governments to deal with matters which are their concern. In this respect our proposals conform to the views of the majority of local Governments.

CHAPTER XX.

SUMMARY OF RECOMMENDATIONS.

- (1) Accidents should be reported in a uniform manner (paragraph 47).
- (2) State control of premium rates is undesirable, but insurers' revenue accounts of compulsory insurance should be framed in such a way as to give a clear picture of the business transacted (paragraph 71).
- (3) Insurance against third-party risks should be compulsory (paragraph 73).
- (4) Such insurance should be compulsory for all classes of motor vehicles, and should include risks in respect of fare-paying passengers in vehicles plying for hire (paragraph 74).
- (5) Insurance against third-party risks should be limited to Rs. 30,000 in respect of goods lorries, buses and other vehicles plying for hire, and unlimited in respect of all other classes (paragraph 75).
- (6) Insurance against risks to fare-paying passengers should be limited to Rs. 3,000 per passenger in the case of buses and to Rs. 5,000 per passenger in the case of other hired vehicles (including taxis) (paragraph 75).
- (7) The full liability of third-party claims should be borne by the insurer (paragraph 76).
- (8) The business of compulsory insurance should not be undertaken by the State (paragraph 78).
- (9) Injured parties should be given the right to proceed against the insurer when a decree has been passed against the assured (paragraph 80).
- (10) The English law should be followed in so far as third parties are protected against any repudiation of policies by insurers on certain grounds (paragraph 81).
- (11) An authorised user of a vehicle should be enabled to claim direct from the insurer without making the assured an intermediary party (paragraph 83).
- (12) The provisions of the English law with regard to the safeguard of the rights of third parties in the case of the assured's insolvency should be followed; also that relating to the disclosure of the existence of insurance by the assured (paragraph 84).
- (13) Section 306 of the Indian Succession Act, 1925, should be amended so that an injured person shall retain his remedy at law for personal injuries in the event of the death of the person responsible for those injuries (paragraph 85).
- (14) Under certain conditions a deposit may take the place of compulsory insurance, but no other alternative is necessary (paragraph 86).
- (15) In order to make compulsory insurance as light a burden as possible on those engaged in public transport, co-operative insurance should be fostered amongst those engaged subject to certain conditions (paragraph 88).
- (16) Motor insurance should be separated from other accident insurance business in the returns, etc., to be submitted under the proposed Indian Insurance Act, and should require a separate deposit (paragraph 90).

(17) Insurance agent's commission should be limited to 10 per cent. in the case of compulsory insurance (paragraph 91).

(18) Liaison between injured parties, the administration and insurers should be left to local Governments to arrange, but to prevent bogus or inflated claims, police reports of accidents should be freely available for insurers' use (paragraph 92).

(19) It should be obligatory on insurers to notify cancellation of policies (paragraph 93).

(20) The English law regarding certificates of insurance should be followed (paragraph 93).

(21) Vehicles entering British India from Indian States should be insured against third-party risks (paragraph 95).

(22) In order to reduce the large number of accidents from public vehicles, steps should be taken to put the industry on a sounder basis (paragraph 96).

(23) Steps should also be taken to prevent the serious overloading of goods vehicles (paragraph 99).

(24) The Indian Motor Vehicles Act should be amended in order to deal more rigorously with negligent drivers (paragraph 102).

(25) An offence of rash driving should be dealt with on its merits irrespective of any desire on the part of the parties concerned to compound (paragraph 103).

(26) Legislation in connection with compulsory insurance should be Central (paragraph 104).

In conclusion we wish to acknowledge the readiness of all local Governments to co-operate with us and to furnish, often at Acknowledgments. very short notice, the material on which our conclusions are based. We also desire to place on record our appreciation of the services of our Secretary, Mr. C. H. Reynolds, I.P., and the staff working under him. Mr. Reynolds has dealt most ably with the mass of material before us, and his intimate knowledge of the practical working of the Indian Motor Vehicles Act, 1914, and the rules framed thereunder, and of the legislation relating to motor transport in other countries has been of the utmost assistance to us in our deliberations.

N. J. ROUGHTON, *Chairman*,

NURMAHOMED M. CHINOY, *Member*,

RATAN MOHAN CHATTERJEE, *Member*.

C. H. REYNOLDS,
Secretary.

NEW DELHI:

The 9th March 1937.

APPENDICES.

APPENDIX 1.

QUESTIONNAIRE.

PART I.

1. What was the number of motor vehicles—

- (a) private,
- (b) taxis,
- (c) motor buses and lorries,
- (d) goods lorries,

on the road during the last 4 years?

2. Can you give figures as regards (b), (c) and (d) of the number of owners owning:—

- (i) 1 vehicle,
- (ii) 2 vehicles,
- (iii) 3 to 10 vehicles,
- (iv) 11 vehicles and over.

Latest available figures for one year only should be given.

3. What are the reported figures of (a) fatal, (b) non-fatal (but involving injury to human beings) accidents for the last four years in your province? Give separate figures for each year.

4. Can you state how many of these were caused by (a) private cars, (b) taxis, (c) buses, (d) goods lorries?

5. How many prosecutions for negligence in driving motor vehicles have been instituted in the last four years, and what is the percentage of convictions?

6. What is the system of reporting accidents? Are all non-fatal accidents in practice reported?

7. To what extent are passenger vehicles plying for hire purchased on the hire purchase or instalment system? If complete figures are not available, statistics for a few typical routes may be given.

8. Have you any evidence of the extent to which hirers of such vehicles are unable to complete their purchase with the result that the vehicles are taken back or sold up by the owners?

9. Do you know of any cases in which taxi or bus owners have paid compensation as an act of grace to the victims of accidents or relatives of people killed?

10. Can you state how many claims for damages for injuries sustained in motor car accidents have been made in the civil courts during the last four years, and in how many cases compensation has been awarded and paid?

11. Is an agency maintained to ensure that (a) commercial and (b) private vehicles are maintained in a satisfactory mechanical condition? Does the agency work satisfactorily?

12. Can you give statistics for the past four years of accidents due to mechanical defects in the various classes of motor vehicles?

13. Are drivers of (a) commercial, or (b) private vehicles required to pass any test before they obtain driving licences? Do you consider that the standard of driving is adequate, or that accidents are to any appreciable extent due to lack of competency among drivers?

14. Do you consider that Motor Vehicles Insurance should be made compulsory? If so, in respect of what classes of vehicles?

15. What class of risks should be covered by compulsory insurance?

16. Should any, and if so, what, minimum sum be specified to cover the third party risks against which a motor vehicle should be insured?

Note.—The minimum required under the English law for any one vehicle is £25,000 in the case of a public service vehicle and £5,000 in any other case.

17. In the case of vehicles licensed to carry passengers do you consider that—

(a) compulsory insurance should be complete in respect of risks to each and every passenger, or that

(b) it would be sufficient if risks were limited to a proportion of the total number of passengers carried.

Explanation.—The practice at present in the case of such vehicles is to insure up to X rupees for any one passenger, but limited to 4X rupees in any one accident.

18. Is insurance at present made compulsory in respect of any class of motor vehicle as a condition precedent to granting a registration certificate or owners permit? If so, for what areas?

19. Are there any methods of avoiding those regulations?

20. Is there any difficulty in finding insurance companies willing to do this business?

21. Are there any restrictions on the companies doing this business? If not, does the absence of such restrictions lead to any practical difficulties?

22. Should any conditions be demanded from insurance companies undertaking the business of compulsory motor car insurance, in the way of a fixed deposit, or otherwise? If minima are to be prescribed, what figures do you consider suitable?

Note.—In England, a company which transacts motor vehicles business must deposit £15,000, irrespective of any other deposit which it may have made.

23. Is it necessary or desirable that local Governments should specify the companies with which compulsory motor insurance should be effected?

24. Do you consider that any and if so, what restrictions should be placed on companies undertaking this business?

25. In the case of large corporations who may have their own insurance funds do you consider that such funds may be permitted to continue? If so, do you consider that the same conditions should be applicable in respect of these funds as may be made applicable in the case of insurance companies doing motor insurance business?

26. Do you consider it should be made obligatory on insurance companies transacting this class of business to maintain separate accounts in order to facilitate supervision by Government, or do you consider that if

accounts are published, publicity will provide an adequate check against unsound companies?

27. If compulsory insurance is introduced, do you consider that any measures are necessary to secure that persons to whom compensation is due succeed in obtaining it?

28. Do you consider any, and if so, what, co-operation between insurance companies and motor vehicles registration authorities is necessary in order to secure that vehicles for which insurance is made compulsory do not run on the road unless they have been insured? In particular do you consider that steps should be taken to ensure that policies for compulsory insurance have to be renewed at the same time that registration fees are due for payment?

29. Do you consider that legislation to secure the compulsory insurance of motor cars in British India should be introduced in the Central Legislature, or that it should be left to local Governments to make rules under the powers to be conferred by the proposed amendments to the Indian Motor Vehicles Act, 1914?

30. Do you consider that any special arrangements are necessary for vehicles plying partly in Indian States and partly in British India?

31. What is the average distance that a bus in (a) urban, and (b) rural areas will run in a day and what approximately is the proportion of its seating capacity that will be filled?

32. To what extent would the taxable capacity of passenger motor vehicles be affected by the enforcement of compulsory insurance assuming that the cost of insurance is not more than 1/3rd anna per bus mile? Would any scaling down of the present rates of taxation be necessitated?

33. Are there any other matters which you wish to bring to notice in connection with the proposed introduction of compulsory motor insurance in India?

34. In particular do you consider any legal provisions for the protection of third parties similar to those in force in England are necessary?

Note.—The sections of the English Law referred to are appended to the questionnaire.*

(Road Traffic Act, 1930—Section 38.

Road Traffic Act, 1934—Sections 10 and 12).

PART II.

Specially applicable to Motor Insurance Associations and Companies.

35. Can you furnish any information as to—

(a) how many private owners are insured against third party risks?

(b) how many goods-lorry owners are insured against third party risks?

(c) how many taxi and bus owners are insured against (i) passenger and (ii) third party risks?

36. How many claims for damages on account of death, or injury to the body, have been made during the past 4 years, and of these how many have been accepted in full or in part?

* They are reproduced in Appendix 2 to this Report.

37. What was the total premiums paid, the claims paid, the cost of commission and the overhead charges during the last four years?
38. Are you in a position to continue motor insurance business if compulsory insurance is introduced? Will there be any difficulty as regards local agents or branches?
39. Do you consider that premia will rise or fall as a result?
40. Do you consider that separate insurance policies should be issued for risks the insurance of which is made compulsory?
41. If so, should separate accounts be kept in respect of these risks, and should any deposit by the company that is required to be made in respect of this class of business be earmarked for it?
- Note.—Bodies mentioned in the heading of this part of the questionnaire are requested also to answer those questions in Part I with which they are concerned.*

Any persons or associations who can give any information or wish to express any opinions in connection with the points raised in the questionnaire are requested to communicate the same to the Secretary, Motor Vehicles Insurance Committee, C/o the Department of Industries and Labour, New Delhi.

C. H. REYNOLDS,

Secretary,
Motor Vehicles Insurance Committee.

NEW DELHI;

The 21st November 1936.

APPENDIX 2.

RELEVANT EXTRACTS OF THE ENGLISH AND IRISH LAWS
REFERRED TO IN CHAPTERS XI, XII AND XVI.

ENGLISH ROAD TRAFFIC ACT, 1930.

* * * *

35. (1) Subject to the provisions of this Part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Part of this Act.

* * * *

(4) This section shall not apply to a vehicle owned by a local authority, a police authority, or the receiver for the Metropolitan Police District, or by a person who has deposited and keeps deposited with the Accountant-General of the Supreme Court for and on behalf of the Supreme Court the sum of fifteen thousand pounds, at any time when the vehicle is being driven by the owner or by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

* * * *

36. (1) In order to comply with the requirements of this Part of this Act, a policy of insurance must be a policy which:—

Requirements in respect of policies.

- (a) is issued by a person who is an authorised insurer within the meaning of this Part of this Act; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on a road:

Provided that such a policy shall not be required to cover—

- (i) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or
- (ii) except in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting on to or alighting from the vehicle at the time of the occurrence of the event out of which the claims arise; or
- (iii) any contractual liability.

* * * *

(4) Notwithstanding anything in any enactment, a person issuing a policy of insurance under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

(5) A policy shall be of no effect for the purposes of this Part of this Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate (in this Part of this Act referred to as a "certificate of insurance") in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

* * * * *

37. (1) In order to comply with the requirements of this Part of this Act a security must—

- (a) be given either by an authorised insurer or by some body of persons which carries on in the United Kingdom the business of giving securities of a like kind and which has deposited and keeps deposited with the Accountant-General of the Supreme Court for and on behalf of the Supreme Court the sum of fifteen thousand pounds in respect of that business; and
- (b) consist of an undertaking by the giver of the security to make good, subject to any conditions specified therein, and up to the amount, in the case of an undertaking relating to the use of public service vehicles, of not less than twenty-five thousand pounds, and, in any other case, of not less than five thousand pounds, any failure by the owner of the vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any such liability as is required to be covered by a policy of insurance under the last preceding section which may be incurred by him or them.

(2) A security shall be of no effect for the purposes of this Part of this Act unless and until there is issued by the person giving the security to the person to whom it is given a certificate (in this Part of this Act referred to as a "certificate of security") in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.

38. Any condition in a policy or security issued or given for the purposes of this Part of this Act, providing that no liability shall arise under the policy or security or that any liability so arising shall cease, in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such claims as are mentioned in paragraph (b) of subsection (1) of section thirty-six:*

Provided that nothing in this section shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties.

39. Provision may be made by regulations under section twelve of the Roads Act, 1920, for requiring a person applying for a licence in respect of a motor vehicle under section thirteen of the Finance Act, 1920, as amended by any subsequent enactment, to produce such evidence as may be prescribed that either—

- (a) on the date when the licence comes into operation there will be in force the necessary policy of insurance or the necessary

Requirements in respect of securities.

Certain conditions to policies or securities to be of no effect.

Production of certificate of insurance or certificate of security on application for motor vehicle licence.

security in relation to the user of the vehicle by the applicant or by other persons on his order or with his permission; 10 and 11
Geo. 6, c. 72;
10 and 11
Geo. 5, c. 18.

(b) the vehicle is a vehicle to which the first section contained in this Part of this Act does not apply at any time when it is being driven by the owner thereof, or by a servant of his in the course of his employment, or is otherwise subject to the control of the owner.

40. (1) Any person driving a motor vehicle on a road shall, on being so required by a police constable give his name and address and the name and address of the owner of the vehicle and produce his certificate, and if he fails so to do he shall be guilty of an offence:

Provided that, if the driver of a motor vehicle within five days after the date on which the production of his certificate was so required produces the certificate in person at such police station as may have been specified by him at the time its production was required, he shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate to the constable.

(2) If in any case where, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person, the driver of the vehicle does not at the time produce his certificate to a police constable or to some person who, having reasonable grounds for so doing, has required its production, the driver shall as soon as possible, and in any case within twenty-four hours of the occurrence of the accident, report the accident at a police station or to a police constable and thereupon produce his certificate, and if he fails so to do, he shall be guilty of an offence:

Provided that a person shall not be convicted of an offence under this sub-section by reason only of failure to produce his certificate if, within five days after the occurrence of the accident, he produces the certificate in person at such police station as may be specified by him at the time the accident was reported.

(3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of a chief officer of police to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section thirty-five of this Act on any occasion when the driver was required under this section to produce his certificate, and if the owner fails to do so he shall be guilty of an offence.

(4) In this section the expression "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence that the vehicle is not or was not being driven in contravention of section thirty-five of this Act as may be prescribed.

* * * * *

43. (1) No part of any sum deposited by any person with the Accountant-General of the Supreme Court under section thirty-five or section thirty-seven of this Act shall, so long as any liabilities, being such liabilities as are required to be covered by a policy of insurance under this Part of this Act, which have been incurred by him have not been discharged or otherwise provided for, be applicable in discharge of any other liabilities incurred by him.

* * * * *

ENGLISH ROAD TRAFFIC ACT, 1934.

* * * * *

Duty of
insurers to
satisfy
judgments
against
persons
insured in
respect of
third-party
risks.

10. (1) If, after a certificate of insurance has been delivered under sub-section (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of sub-section (1) of section thirty-six of the principal Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under the foregoing provisions of this section—

- (a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings; or
- (b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or
- (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability, the policy was cancelled by mutual consent or by virtue of any provision contained therein, and either—
 - (i) before the happening of the said event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or
 - (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made such a statutory declaration as aforesaid, or
 - (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part of this Act in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under the foregoing provisions of this section, if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or, if he has avoided the policy on that ground, that he was entitled so to do apart from any provision contained in it.

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this sub-section as respects any judgment obtained in proceedings commenced before the commencement of that action, unless before or within seven days after the commencement of that action he has given notice thereof to the person who is the plaintiff in the said proceedings, specifying the non-disclosure or false representation on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled, if he thinks fit, to be made a party thereto.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability of a person insured by a policy exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy in respect of that liability, he shall be entitled to recover the excess from that person.

(5) In this section the expression "material" means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy.

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11. Where a certificate of insurance has been delivered under subsection (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in subsection (1), or subsection (2), of section one of the Third Parties (Rights against Insurers) Act, 1930, shall, notwithstanding anything in that Act, not affect any such liability of that person as is required to be covered by a policy under paragraph (b) of subsection (1) of section thirty-six of the principal Act, but nothing in this section shall affect any rights against the insurer conferred by that Act on the person to whom the liability was incurred.

Bankruptcy
etc. of
insured
persons
not to affect
certain
claims by
third
parties.

20 and 21
Geo. 5. c. 25.

12. Where a certificate of insurance has been delivered under subsection (5) of section thirty-six of the principal Act to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters:—

Avoidance of
restrictions
on scope of
policies
covering
third-party
risks.

- (a) the age or physical or mental condition of persons driving the vehicle; or
- (b) the condition of the vehicle; or
- (c) the number of persons that the vehicle carries; or
- (d) the weight or physical characteristics of the goods that the vehicle carries; or
- (e) the times at which or the areas within which the vehicle is used; or
- (f) the horse power or value of the vehicle; or
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Roads Act, 1920;

10 and 11
Geo. 5. c. 72.

shall, as respects such liabilities as are required to be covered by a policy under paragraph (b) of sub-section (1) of section thirty-six of the principal Act be of no effect:

Provided that nothing in this section shall require an insurer to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability, and any sum paid by an insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this section shall be recoverable by the insurer from that person.

Duty of persons against whom claims are made to give information as to insurance;

13.—(1) Any person against whom a claim is made in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section thirty-six of the principal Act shall, on demand by or on behalf of the person making the claim, state whether or not he was insured in respect of that liability by any policy having effect for the purposes of Part II of the principal Act, or would have been so insured if the insurer had not avoided or cancelled the policy, and, if he was or would have been so insured, give such particulars with respect to that policy as were specified in the certificate of insurance delivered in respect thereof under subsection (5) of section thirty-six of the principal Act.

(2) If, without reasonable excuse, any person fails to comply with the provisions of this section, or wilfully makes any false statement in reply to any such demand as aforesaid, he shall be guilty of an offence.

Third Parties (Rights against Insurers) Act, 1930.

* * * * *

Rights of third parties against insurers on bankruptcy etc. of the insured.

1.—(1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge;

if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under section one hundred and thirty of the Bankruptcy Act, 1914, for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which

* This is a policy in respect of third-party risks.

he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the making of an order under section one hundred and thirty of the Bankruptcy Act, 1914, in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2) of this section, the insurer shall, subject to the provisions of section three of this Act, be under the same liability to the third party as he would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Act shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Act, the expression "liabilities to third parties," in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Act shall not apply—

- (a) where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; or
- (b) to any case to which subsections (1) and (2) of section seven of the Workmen's Compensation Act, 1925, applies.

* * * * *

2.—(1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of an order being made under section one hundred and thirty of the Bankruptcy Act, 1914, in respect of the estate of any person, or in the event of a winding-up being passed, with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver, or manager, or person in possession of the property to give at the request of any person claiming

Duty to give necessary information to third parties.

that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

Law Reform (Miscellaneous Provisions) Act, 1934.

* * * * *

1.—(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section one hundred and eighty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, for damages on the ground of adultery.

Saorstat Eireann* Road Traffic Act, 1933.

* * * * *

78.—(1) Where a person (in this section referred to as the claimant) claims to be entitled to recover from the owner or the driver of a mechanically propelled vehicle or has in any court of justice (in proceedings of which the vehicle insurer or vehicle guarantor hereinafter mentioned had notice) recovered judgment against such owner or driver for a sum (whether liquidated or unliquidated) against the liability for which such owner or driver is insured by an approved policy of insurance or the payment of which by such owner or driver is guaranteed by an approved guarantee or in respect of which such owner or driver is covered by an approved combined policy and guarantee the claimant may serve on (as the case may be) the vehicle insurer by whom such policy or policy and guarantee was issued or the vehicle insurer or the vehicle guarantor by whom such guarantee was issued a notice in writing of the claim or judgment for such sum and upon the service of such notice such of the following provisions as are applicable shall have effect, that is to say:—

- (a) such vehicle insurer shall not after service of such notice pay to such owner or driver in respect of the sum so claimed or recovered by the claimant any greater amount than the amount (if any) which such owner or driver shall have actually paid to the claimant in respect of such sum;
- (b) where the claimant has so recovered judgment for such sum or after service of such notice so recovers judgment for such sum or any part thereof, such vehicle insurer or vehicle guarantor shall pay to the claimant so much of the moneys (whether damages, or costs) for which judgment was or is so recovered as such vehicle insurer or vehicle guarantor has insured or guaranteed and is not otherwise paid to such claimant and such payment shall as against the insurer or principal debtor

Effect of death on certain causes of action.

Miscellaneous provisions in relation to insured or guaranteed moneys.

be a valid payment under such approved policy of insurance or approved combined policy and guarantee or approved guarantee;

- (c) where the claimant has so recovered judgment for such sum or after service of such notice so recovers judgment for such sum or any part thereof and has not recovered from such owner or driver or such vehicle insurer or vehicle guarantor the whole amount of such judgment, the claimant may apply to the Court in which he recovered such judgment for leave to execute such judgment against such vehicle insurer or vehicle guarantor and thereupon such Court may, if it thinks proper, grant such application either in respect of the whole amount of such judgment or in respect of any specified part of such amount;
- (d) where the claimant has not so recovered judgment for such sum, the claimant may apply to any court of competent jurisdiction in Saorstat Eireann in which he desires to institute proceedings for the recovery of such sum from such owner or driver for leave to institute and prosecute such proceedings against such vehicle insurer or vehicle guarantor (as the case may be) in lieu of such owner or driver, and such court, if satisfied that such owner or driver is not in Saorstat Eireann or cannot be found or cannot be served with the process of such court or that it is for any other reason just and equitable that such application should be granted, may grant such application, and thereupon the claimant shall be entitled to institute and prosecute such proceedings against such vehicle insurer or vehicle guarantor and to recover therein from such vehicle insurer or vehicle guarantor any sum which he would be entitled to recover from such owner or driver and the payment of which such vehicle insurer or vehicle guarantor has insured or guaranteed;
- (e) such vehicle insurer or vehicle guarantor shall not, as a ground for refusing payment of moneys to the claimant or as a defence to proceedings by the claimant or as a defence to proceedings by the claimant, rely on or plead any invalidity of such policy of insurance, guarantee, or combined policy and guarantee (as the case may be) arising from any fraud or any misrepresentation or false statement (whether fraudulent or innocent) to which the claimant was not a party or privy and which, if constituting a misdemeanour under this Part of this Act, was not the subject of a prosecution and conviction under the relevant section of this Part of this Act.

APPENDIX 3.

(i) LIST OF NON-OFFICIAL WITNESSES WHO SUBMITTED EVIDENCE BOTH ORALLY AND IN WRITING.

Professor A. N. Mallik, Lecturer Post-graduate, Commerce Department, Calcutta University.

Motor Industries Association, Calcutta (Messrs. H. N. Nicholls & W. K. Battey).

Automobile Association of Bengal (Mr. S. K. Sen, Secretary).

Bengal Bus Syndicate (Mr. H. S. Sodhi, Secretary).

Calcutta Accident Insurance Association (Messrs. J. P. Baggs, J. St. J. L. Carson & E. Ross).

Bengal Bus Owners Drivers Association (Messrs. Madan Mohan Barman, President, and Sham Singh, Secretary).

Taxi Owners Association, Calcutta (Mr. R. K. Jaidka, Secretary).

Messrs. The Bombay Garage, Nagpur (Mr. M. Nanjiani, Manager).

Messrs. The Provincial Automobile Company, Nagpur (Mr. P. B. Kale, Managing Partner).

The Red Cross Society, Nagpur (Mr. S. Y. Deshmukh, Hon. Secretary).

Motor Owners' Union, Nagpur (Rao Sahib R. W. Fulay, M.L.C., and V. P. Kolte).

Motor Owners' and Drivers' Association, Jubbulpore (Mr. Durga Prasad, Pleader, President).

The South Indian Chamber of Commerce (S. Venkatachalam Chetti).

Triplicane and Mylapore Bus Amalgamations (Mr. H. C. Fernandez, Secretary).

The Madras Trades Association (Mr. F. G. Luker).

The City Motor Service, Madras (Mr. N. Sundaram Ayyar).

The South Indian Chamber of Bus Owners (Mr. V. S. R. Mani, Secretary).

The Motor Vehicles & Allied Merchants Association, Madras (Mr. P. Reid).

The Safety First Association of India (Mr. A. S. Trollip, Hon. General Secretary).

The Bombay Electric Supply & Tramway Company (Messrs. A. S. Trollip and F. Wright).

The Indian Roads & Transport Development Association (Lt.-Col. H. C. Smith, O.B.E., M.C., General Secretary).

The National Employers Mutual General Insurance Association (Mr. A. Durran, Manager).

The Gokhale Institute of Politics & Economics, Poona (Professor D. R. Gadgil, Director).

The Western India Automobile Association (Mr. A. H. Sykes, Secretary).

- The Gulshan Motor Service, Talegaon, Dabhade, G. I. P. Rly. (Mr. Gulam Hussein Fazal, Proprietor).
- The Panchgani Motor Service, Poona (Mr. J. N. Satarawala, Sole Proprietor).
- The Bombay Taxi Drivers' Union (Mr. S. H. Jhabwala, Secretary).
- The Bombay Garage, Ahmedabad (Mr. Heble, Manager).
- The Chamber of Commerce (Messrs. A. K. G. Hogg and D. E. Gough).
- The Ratnagiri District Co-operative Motors Association (Messrs. W. G. Shetye, President, and R. B. Shirke, Vice-President).
- The Mahratta Chamber of Commerce and Industries, Poona (Professor V. G. Kale, Chairman, and Mr. A. R. Bhat, Hon. Secretary).
- The Motor Manufacturers and Importers' Association, Bombay (Messrs. F. E. James and J. W. Milnes).
- The Karachi Indian Merchants' Association (Rao Bahadur Shiv-rattan Mohatta, President).
- The Ocean Accident and Guarantee Corporation, Karachi (Mr. H. A. Bhawnani, Principal Agent).
- The Karachi Taxi Motor Drivers' Union (Messrs. Abdul Jabbar & Shankar M. Menon, Secretaries).
- Sind Motor Dealers' Association, Karachi (Mr. G. M. Khandawala).
- The Buyers & Shippers' Chamber, Karachi (Mr. W. M. Muzumdar and other representatives).
- Punjab Motor Dealers Association, Lahore (Messrs. H. S. Das, W. Gopaldas and Dhani Chand).
- Punjab Motor Union, Lahore (Mr. Aziz Ahmad, Secretary).
- Representatives of Rural Transport Companies (Master Sant Singh, Mian Muhammad Din and Mr. Sham Lal).
- Representatives of Urban Transport Companies (Sardars Manohar Singh and Dalip Singh).
- The United Provinces Automobile Association, Allahabad (Mr. Bhagwat Dayal, Bar.-at-Law, Hon. Secretary).
- United Motor Works & Service Company, Ltd., Ranchi (S. N. Ganguli, Director).
- Mr. K. L. Misser, Patna, representative of Motor Transport interests in Patna.
- Patna Bus Association (Mr. K. B. Singh, Secretary, with legal adviser, representing the Dinapore Bus Association also).
- The Gwalior & Northern India Transport Company, New Delhi (Mr. A. S. deMello, General Manager).

(ii) LIST OF NON-OFFICIAL WITNESSES WHO SUBMITTED ORAL EVIDENCE ONLY.

The Pachmari Motor Service, Pachmari. (Mr. H. Brearley).
 *Khan Bahadur Sardar Habib Ullah, M.L.C., Punjab, Lahore.
 *Mr. M. A. Ghani, M.L.C., Punjab, Lahore.
 *Sheikh Mohd. Sadiq, M.L.C., Punjab, Lahore.
 Messrs. Govan Bros., Ltd., New Delhi (Mr. A. F. T. Cambridge).
 The Delhi Taxi Lorry Owners and Drivers Union, Delhi (Mr. Dan Singh, Secretary).
 Captain S. E. C. White, Lloyd's Agent at Bombay.

(iii) LIST OF NON-OFFICIAL WITNESSES WHO SUBMITTED EVIDENCE IN WRITING ONLY.

The Indian Chamber of Commerce, Calcutta.
 City Banking and General Credit Corporation, Calcutta.
 Indian Insurance Institute, Calcutta.
 Mr. B. B. Lahiri, Calcutta.
 The All-India Motor Travellers' Association, Kolhapur.
 The Indian Merchants' Chamber, Bombay.
 The General Motors Acceptance Corporation, Sewri, Bombay.
 The Dharwar District Co-operative Motor Owners' Association.
 The Regal Motor Service, Junnar (District Poona).
 The Belgaum District Motor Owners' Association.
 The Karachi Chamber of Commerce, Karachi.
 The Workmen's Compensation Aid Society, Karachi.
 The Upper India Chamber of Commerce, Cawnpore.
 S. N. Venkatesa Iyer, Advocate, Coimbatore.
 The New India Assurance Company (Bombay), Ajmer.
 The East Indian Railway Administration.†
 A number of individual motor owners and others in Bihar interested in the motor industry.

* Representing the general travelling public.

† Received through the Government of the United Provinces

